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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~220.~~ 22

CHARLES A. NICHOLS, ASSIGNEE OF AMASA M. EATON, A BANKRUPT, APPELLANT,

vs.

AMASA M. EATON, WILLIAM M. BAILEY & GEORGE B. RUGGLES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED OCTOBER 10, 1873.

11 Wright 107
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4 Watts & Sergeant - 19 -
Wing v Parke
9 Wright 165.

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1 Circuit court of the United States, district of Rhode Island, sc.

CHARLES A. NICHOLS, ASSIGNEE, &C., *vs.* AMASA M. EATON ET AL. } In equity.—Filed Febr'y 17th, 1870.

To the honorable the judges of the circuit court of the United States for the district of Rhode Island:

Charles A. Nichols, of the city and county of Providence, in the State and district of Rhode Island, assignee in bankruptcy of Amasa M. Eaton, of North Providence, in said county, State, and district, brings this, his bill of complaint, against the said Amasa M. Eaton and against William M. Bailey, of said North Providence, the said Amasa M. Eaton and George B. Ruggles, of Gloucester, in said county, and all in said district, trustees under the last will and testament of Sarah B. Eaton, late of said North Providence, deceased.

And thereupon your orator complains and says that he is in-
2 formed and believes that hetetofore, to wit, in the year 1862, one William M. Bailey, jr., and the said Amasa M. Eaton entered into business under the copartnership firm of Bailey & Eaton; that said copartners were both young men, without capital or credit, or the means of carrying on their said business; that in order to furnish them with capital and credit, and the means of carrying on the said business, the said William M. Bailey and the said Sarah B. Eaton, then in full life, being the father and mother respectively of said William M. Bailey, jr., and Amasa M. Eaton, and being also near neighbors and friends, agreed to endorse the negotiable paper of said Bailey & Eaton, and did endorse all the negotiable paper thereafterwards made by said Bailey & Eaton, all of which said endorsed paper was made payable at the National Bank in Providence, and was by said bank discounted on the strength and security of said endorsements, and that the money so obtained formed the sole capital of said firm while the said Sarah B. Eaton lived, and that the amount of discounts so obtained amounted to a very large sum of money.

And your orator further states that he is informed and believes that the said Sarah B. Eaton, deceased, on the day of August, 1864, seized and possessed of large real and personal estates, exceeding five hundred thousand dollars in value, having four children, three sons and a daughter, living at the time of her decease, and leaving a last will and testament, a copy of which is hereunto annexed marked A, and made a part of this bill, which said will was, on the third day of October, 1864, duly proved, approved, and allowed by the town council of said North Providence, duly authorized to act as a court of probate.

And your orator further states that he is informed and believes that said will was made and executed on or about the first day of May, 1864, while said partnership still existed, and while said endorsements still continued, and that, at the time of the execution of said will, and from thence hitherto down to the time of her decease, and down to the time of the filing of this bill, the said Amasa M. Eaton was the only one of the said Sarah B. Eaton's sons doing business requiring any capital or incurring any pecuniary risk.

3 And your orator further states that he is informed and believes that the said Sarah B. Eaton, in her said will, appointed as trustees under the same the said William M. Bailey, the father of her said son Amasa's partner, and the coendorser with her of the said Bailey &

Eaton's paper; her said son, Amasa M. Eaton, one of the makers of said paper; and the said George B. Ruggles, a son by a former marriage, who was not accustomed to transact business, and not competent to perform the duties of said trust, and that said William M. Bailey Amasa M. Eaton, and George B. Ruggles have nominally accepted said trust; and the said George B. Ruggles has not attempted to perform the duties thereof, and has not exercised said office in regard to the trust-estate in said will, devised for the benefit of said Amasa, but has left the discretion in regard to the same to be exercised by the said Amasa, aided and assisted therein by the said William M. Bailey.

And your orator further states that he is informed and believes that the said Amasa M. Eaton, with the assent and concurrence of his co-trustees, received, and still receives, all the income and moneys of said trust estate, and made, and still makes, all the disbursements thereof; kept, and still keeps, all the books and vouchers, and generally managed, controlled, and used said trust estate since the decease of the said Sarah B. Eaton, except during his absence in Europe, when the said William M. Bailey, jr., the late partner of the said Amasa M. Eaton, performed said offices, and the said Amasa M. Eaton still manages, controls, and uses said estate.

And your orator further states that he is informed and believes that after the decease of the said Sarah B. Eaton, the paper of said Bailey & Eaton was still made payable at said National Bank, or at the Old National Bank, the National Banking Association into which said National Bank was transformed, and was discounted by said National Bank or by said Old National Bank, and that the endorsement of James Y. Smith was substituted for that of the said Sarah B. Eaton, deceased, and that said Smith's endorsement was procured by the said William M. Bailey and Amasa M. Easton; and that thereafterwards, and until the failure of the said Bailey & Eaton, as hereinafter stated and set forth, the capital and credit and means of carrying on the business of the said Bailey & Eaton was obtained almost entirely by discounts of said paper endorsed as aforesaid.

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And your orator further states that he is informed and believes that the endorsements of the said James Y. Smith were entirely without consideration, and that, at the time of the substitution of the endorsement of the said James Y. Smith for that of the said Sarah B. Eaton, deceased, the said William M. Bailey and Amasa M. Eaton represented that the said Amasa would put into the said business of Bailey & Eaton the sum of twenty-five thousand dollars in cash; and at said time, and from time to time thereafter, until and immediately preceding the execution of the assignments hereinafter mentioned, the said William M. Bailey and the said Amasa M. Eaton represented that said Amasa M. Eaton had an equal one-third share of the very large property and estates left by his mother, and that said share was sufficient to meet all the obligations which the said Smith had endorsed as aforesaid; and that the said William M. Bailey and the said Amasa M. Eaton, at the time and times aforesaid, represented to said Smith, and always during the period within which he was making the endorsements aforesaid, gave him to understand that said property should be used for the payment of the liabilities aforesaid endorsed by said Smith, and that the said Amasa was able to pay and would pay all his obligations. And your orator is informed and believes that the said Smith relied in making said endorsements upon the assurances of said William M. Bailey and said Amasa M. Eaton; that said Eaton's estate was sufficient to indemnify him, and that it would hold him harmless against any and all loss arising from said endorsements.

And your orator submits that the said William M. Bailey and Amasa M. Eaton, together with said George B. Ruggles, should execute and fulfill said assurances, engagements, and representations, and that they should advance to your orator as the assignee in bankruptcy of said Amasa, a sufficient sum from said estate out of the portion given to them in discretionary trust, as hereinafter more fully cited and set forth, to pay all the debts of the said bankrupt's estate, or a sum sufficient for the payment of said liabilities endorsed as aforesaid.

And your orator further states, that he is informed and believes that the said trustees, under the discretionary power contained in the will of the said Sarah B. Eaton, paid and advanced for the benefit of the said Amasa M. Eaton, and to assist him in the payment of his liabilities, a portion of the property which they were authorized to advance under the provisions of said will.

And your orator further states, that the said Amasa M. Eaton and the said Bailey & Eaton failed in business on or about the first day of March, 1867, and executed and delivered to your orator assignments in trust for the benefit of their creditors, and that the said Amasa M. Eaton assigned his individual property for the payment of certain individual debts absolutely, and such of his other individual debts and the copartnership debts as the holders thereof should release within a certain time in said assignment specified, as in and by said assignment, a copy whereof is hereunto annexed, marked B, and made part hereof, will more fully and at large appear; and the said Bailey & Eaton assigned their copartnership property to pay their copartnership indebtedness, as in and by said assignment, a copy whereof is hereunto annexed, marked C, and made part hereof, will more fully and at large appear; that your orator accepted said trusts, and executed the trusts of said Amasa M. Eaton's assignment by paying the said individual debts required to be paid, and as no holders of his other individual debts or copartnership indebtedness executed releases of the said Amasa M. Eaton, or the said Bailey & Eaton as required in said assignment, the remainder of the assigned estate reverted to the said Amasa M. Eaton; and that from the said Bailey & Eaton's assigned property, the sum of about sixty thousand dollars, exclusive of expenses, has been realized and applied to the reduction of their indebtedness under said copartnership assignment.

And your orator further states that, on the same first day of March, 1867, the said William M. Bailey likewise failed in business, and made an assignment of all his property to the said James Y. Smith in trust for the benefit of his creditors, and afterwards, on the seventh day of October, 1868, obtained a discharge from all his debts under the United States bankrupt act.

And your orator further states that the said Amasa M. Eaton, on the twenty-fourth day of December, 1868, filed his petition in bankruptcy in the United States district court for the district of Rhode Island, and was by said court, on the same twenty-fourth day of December, 1868, adjudged a bankrupt upon said petition, and your orator was by said court, on the twentieth day of January, 1869, appointed assignee of said bankrupt's estate, and that he accepted said office and qualified as such assignee as the law directs.

And your orator further states that claims to the amount of one hundred and thirty-two thousand nine hundred and five dollars and ninety-four cents have been proved against the estate of the said Amasa M. Eaton in bankruptcy, of which one hundred and twenty-nine thousand six hundred and eighty-five dollars and eighty-five cents consisted of

the promissory notes of said Bailey & Eaton, endorsed as aforesaid, and paid by said Smith.

And your orator further states that no assets have as yet come to his hands, under said assignment in bankruptcy, of the estate of said Amasa M. Eaton, wherewith to pay all or any part of the claims proved against said estate as aforesaid.

And your orator further states that he is informed and believes that said will devised all of the real and personal estate of the said Sarah B. Eaton to the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, in trust to care for and manage the same, and to collect and receive the rents, profits, and income thereof, and contained this provision, viz: "And I declare and direct that my said trustees shall stand and be possessed of and interested in my said real and personal estate, and the investments aforesaid, (subject to the preceding powers and provisions,) upon the trusts hereinafter expressed and declared; that is to say, upon trust, from time to time, to pay the rents, profits, dividends, interest, and income of the said trust premises unto and equally
7 among my four children, George Benjamin Ruggles, Amasa Mason Eaton, Charles Frederick Eaton, and Anna Grosvenor Eaton, for and during their respective natural lives, and after their respective deceases, either before or after my decease, then upon trust for such of the children of my said children respectively as shall attain the age or respective ages of twenty-one years, or shall die under that age, leaving lawful issue living at his, her, or their decease, or respective deceases, and his, her, or their heirs and assigns forever, if more than one, as tenants in common; but so nevertheless that the respective child or children of each of my said children shall have his, her, or their parent's share or respective parents' shares only; and if any of my said children should die without leaving any child who shall survive me, and shall attain the age of twenty-one years, or die under that age, leaving lawful issue living at his or her decease, then as to the share or respective shares as well original as accruing, of such child or children respectively, upon the trusts herein declared, concerning the other share or respective shares; and as to all the said trust premises in case of the failure of all the limitations or objects of the preceding trusts in trust for my own right heirs forever."

And your orator further states that he is informed and believes that the said Anna Grosvenor Eaton deceased after her said mother, to wit, on the day of April, 1865, sole and unmarried, leaving no children.

And your orator submits to your honors that, upon the said decease of the said Anna Grosvenor Eaton, the estate devised beneficially to her in said will vested in equal portions in the other three children and heirs of said Sarah B. Eaton, of whom the said Amasa M. Eaton was one, and the said George B. Ruggles and Charles F. Eaton were the other two children; and your orator further submits, that the said Amasa M. Eaton hath a contingent interest in the shares of said estate bequeathed and devised in said will to the said George B. Ruggles and the said Charles F. Eaton.

And your orator further submits that upon the execution of the assignments, as aforesaid, by the said Amasa M. Eaton, and by said Bailey & Eaton to your orator, his legal and equitable interests, other
8 than those of trustee, in the estates devised in said will, were assigned and conveyed for the benefit of creditors, and the same reverted as aforesaid upon the conditions of said assignments to said Amasa M. Eaton.

And your orator further submits that upon the execution of the assignment in bankruptcy aforesaid of said Amasa M. Eaton to your orator, his legal and equitable interests, other than those of a trustee, in the estates devised in said will, were assigned and conveyed to your orator, as assignee in bankruptcy, for the benefit of creditors.

And your orator further submits, that the provisions in said will purporting to deprive the creditors of said Amasa M. Eaton of any benefit from or interest in said estates are nugatory and void, as hereinafter will more fully appear.

And your orator further states, that in said will it is further provided as follows: "Provided, also, that, if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts, or if by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same or any part thereof shall, or, but for this present provision, would belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or concerning so much thereof as should or would have so become vested in or payable to any other person or persons other than my said sons respectively as aforesaid, shall immediately thereupon cease and determine; and the same income shall be applied by my said trustees during all the then residue of the life of my said sons respectively in manner following; that is to say, upon trust to pay and apply the said income or such part thereof as aforesaid to and for the support and maintenance, or otherwise for the use and benefit of the wife, child, or children, for the time being, of my said sons respectively, or such one or more of such wife, child, or children, and in such manner as my said trustees in their discretion shall think proper, and as to such wife for her sole and separate and inalienable use; and in de-
9 fault of any object of the last-mentioned trust, at any period during the life of my said sons respectively, and when and so often as the same shall happen, then, upon trust, from time to time, so long as such vacancy or want of objects shall continue, to accumulate and invest the income aforesaid in augmentation of the principal or capital thereof in the nature of compound interest, with power of changing investments as hereinbefore expressed; and in case at any time after my decease such accumulation should cease to be lawful, then upon trust to apply the said annual produce and income, or such part thereof as may not lawfully be accumulated during said want of objects as aforesaid, in such and the like manner as the same would be applicable under the ulterior trusts of this my will."

And your orator submits, that in and by the aforesaid provision of the said will, or of any other provision therein, there is no limitation over, as by law required, of the beneficial interest in the income bequeathed to any son of the testatrix upon the occurrence of his insolvency, bankruptcy, or alienation of his interest, except so far as the same may be given over to the wife or children of such son.

And your orator further saith, and so charges the fact to be, that the said Amasa M. Eaton has not and never has had either wife or children; and your orator further submits that said pretended limitation over is void, as hereinafter more fully shown and set forth.

And your orator further saith that he is informed and believes that the said trustees did not withdraw said income from said Amasa upon the happening of his insolvency or bankruptcy, nor did they proceed to accumulate and invest said income in augmentation of the capital, upon the happening of either of said events.

And your orator further says, that in and by the provision of the will aforesaid the interest in the accumulation of income directed to be made in default of such wife and children, or after the decease of such son, is not vested during or at the end of any specified life or lives in being or within the certain number of years thereafter as by law required, nor is the said accumulation and all interest therein vested as by law required by any limitations over of the same, as no ulterior trusts or other disposition of said accumulations have been declared or created in said will.

And your orator submits, that in the absence of such specific determination of such accumulation, and in the absence of any limitation over of any interest in such accumulation, the interest of said Amasa M. Eaton in the income of said estate from and after either his insolvency, bankruptcy, or alienation aforesaid, vested by operation of law in your orator as the assignee in bankruptcy of said Amasa M. Eaton, for the benefit of his creditors.

And your orator further states, that it is further provided in said will as follows: "Provided, also, that in case at any future period circumstances should exist which, in the opinion of my said trustees, shall justify or render expedient the placing at the disposal of my said children respectively any portion of my said real and personal estate, then it shall be lawful for my said trustees in their discretion, but without its being in any manner obligatory upon them, to transfer absolutely to my said children respectively, for his or her own proper use and benefit, any portion not exceeding one-half of the trust-fund from whence his or her share of the income under the preceding trusts shall arise; and immediately upon such transfer being made, the trusts hereinbefore declared concerning so much of the trust-fund as shall be so transferred shall absolutely cease and determine; and in case after the cessation of said income as to my said sons respectively, otherwise than by death, as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said son respectively would have been entitled under the preceding trusts in case the forfeiture hereinbefore provided for had not happened."

And your orator further says, that the discretion purporting to be vested in the trustees under said will to appropriate and pay over the income, or any portion thereof, to the said Amasa M. Eaton, after his insolvency, bankruptcy, or alienation of his share of the income
11 of said trust-estate, hath been attempted to be exercised by the said trustees, and that they have allowed the said Amasa M. Eaton, since his insolvency, and also since his bankruptcy aforesaid, to take to his own use the entire income of said one-third of said estate, as fully as he was allowed to receive such income prior to his said insolvency and bankruptcy.

And your orator further says that the provisions last aforesaid in said will purport to vest in said trustees the discretion to convey and pay over one-half of one-third of said estate, and the income of said one-third to a son after insolvency, alienation, or bankruptcy, to the exclusion of the wife and children of such son, and do not vest in said trustees any discretion to pay over such income or to convey such estate to any other person.

And your orator submits that said provisions, vesting and limiting such discretion after such insolvency, alienation, or bankruptcy, are in

fraud of the policy of the law, and that the provisions of said will in regard to the disposition of said estate after the insolvency, bankruptcy, and alienation aforesaid, are inoperative and void, and that the estate of said Amasa M. Eaton is vested in your orator as assignee in bankruptcy of said Amasa.

And your orator further submits that the aforesaid discretion attempted to be vested in said trustees to apply the principal of the estate from which the said income may arise, and the said income also, to said Amasa M. Eaton subsequent to his insolvency, alienation, or bankruptcy aforesaid, controls the pretended limitation over, hereinbefore set forth, to the wife and children of said Amasa, and that the said limitation over is all nugatory and void, and that the interest of said Amasa M. Eaton in the principal and income of said estates vests in your orator, as his assignee in bankruptcy, for the benefit of creditors.

And your orator further submits that said discretion having been attempted to be exercised by said trustees in paying over the income as aforesaid to said Amasa M. Eaton, and in pledging and conveying, in part, the principal of said estate to him, your orator, as assignee in bankruptcy as aforesaid, is entitled to a decree requiring such discre-
12 tion to be further and fully exercised for the benefit of the creditors of said Amasa M. Eaton by the said trustees, and that such discretion, if the same can be or is exercised hereafter, must accrue to your orator, as assignee in bankruptcy, for the benefit of the creditors of said Amasa M. Eaton.

And your orator further states that, by reason of all and every provision of said will and the facts hereinbefore stated and set forth, the entire estate devised in said will for the benefit of said Amasa M. Eaton hath, by operation of law, passed to your orator, as assignee in bankruptcy of the said Amasa M. Eaton, to be administered among his creditors according to law.

To the end, therefore, that the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, trustees under the last will and testament of Sarah B. Eaton aforesaid, and the said Amasa M. Eaton, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated; and that the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, trustees as aforesaid, may be ordered by the decree of this court to render an account of the said estates originally devised in said will for the benefit of said Amasa M. Eaton, and of one-third of the estates originally devised in said will for the benefit of said Anna G. Eaton, and of the income derived from said devised estates respectively since the alienation and insolvency of, and also since the bankruptcy of, said Amasa M. Eaton as aforesaid; and that the said defendants may be ordered to convey and pay over to your orator, as assignee as aforesaid, one-third of one-quarter of the entire trust-estate, being a third of the quarter of the same originally devised in said will for the benefit of the said Anna Grosvenor Eaton, deceased; and that the said defendant trustees may be further ordered to account for and pay over the income of said one-third of one-quarter of said trust-estate which has accrued since the alienation and insolvency, and also since the bankruptcy of the said Amasa M. Eaton aforesaid; and, in default of the order to convey and pay over one-third of one-quarter of said
13 trust-estates as aforesaid, that they may be ordered to convey and pay over one-half of one-third of one-quarter of said estates, and that they may be ordered to convey and pay over to your orator, as assignee as aforesaid, one-quarter of said trust-estates originally devised

in said will in trust for said Amasa M. Eaton, and that they may be ordered to account for and pay over the income of said one-quarter of said trust-estates since the alienation and insolvency, and also since the bankruptcy of said Amasa M. Eaton aforesaid, and to convey and pay over one-half of said one-quarter, in default of the order to convey and pay over the one-quarter aforesaid; or, in default of the orders aforesaid to convey and pay over said estates, that the court may order and decree that the income of said trust-estate may be hereafter paid over to your orator, as assignee as aforesaid, from time to time, to be prescribed in such decree, and that certain portions of the principal of said trust-estates, to be prescribed in said decree, may be conveyed and paid over to your orator, as assignee as aforesaid, and that the said defendants may be ordered to convey the contingent interest of the said Amasa M. Eaton in the shares of said George B. Ruggles and Charles F. Eaton, vested in your orator, as assignee as aforesaid; and that said trustees shall advance and pay over to your orator as aforesaid, as the assignee in bankruptcy of said Amasa M. Eaton, out of said estates conveyed in trust to them, a sufficient sum, not exceeding one-half of the principal sum, and the income of the remaining half, if the same be needed for the payment of the just debts of the said Amasa; and that said defendant trustees may be ordered to account for, convey, and pay over the accumulated shares and portions of said trust-estate as herein prayed in regard to the principal thereof; and that the said defendant trustees may be restrained by a writ of injunction from paying or conveying to the said Amasa M. Eaton, for his own use or benefit, any portion of the income or principal of said trust-estates, and from permitting the said Amasa M. Eaton to receive or have in his hands all or any part of the income or principal of said trust-estates, and that the said Amasa M. Eaton may be restrained from receiving or having in his hands all or any
14 part of the principal or income of the said trust-estates, and that your orator may have such relief as to your honors shall seem meet, and the circumstances of the case may require.

May it please your honors to grant to your orator not only the writ of injunction of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, trustees under the last will and testament of said Sarah B. Eaton, deceased, and to the said Amasa M. Eaton, to restrain said trustees from paying or conveying to the said Amasa M. Eaton, for his own use or benefit, any portion of the income or principal of said trust-estates, or from permitting the said Amasa M. Eaton to receive or have in his hands all or any part of the income or principal of said trust-estates, and to restrain the said Amasa M. Eaton from receiving or having in his hands all or any part of the principal or income of said trust-estates, but also the writ of subpœna of the United States of America, to be directed to the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, trustees under the last will and testament of said Sarah B. Eaton, deceased, and the said Amasa M. Eaton, thereby commanding them, and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your honors shall seem meet.

CHARLES A. NICHOLS,
Assignee in Bankruptcy of Amasa M. Eaton.

HORATIO ROGERS,
CHARLES S. BRADLEY,
Solicitors for Complainant.

RHODE ISLAND DISTRICT, *sc:*

In Providence, the 7th day of February, A. D. 1870. Then personally appeared the above-named Charles A. Nichols, and made oath that the facts and statements in the foregoing bill made of his own knowledge are true, and those made upon information and belief are true according to the best of his information and belief. Before me,

HENRY PITMAN,
Clerk U. S. Circuit Court R. I. District.

15 A.

Will of Sarah B. Eaton.

This is the last will and testament of me, Sarah B. Eaton, of North Providence, in the State of Rhode Island.

I give, devise, and bequeath, all and singular my real and personal estate, whatsoever and wheresoever, at the time of my decease, unto William M. Bailey, of said North Providence, and my two sons, George Benjamin Ruggles and Amasa Mason Eaton, their heirs, executors, administrators, and assigns, according to the nature and quality thereof, respectively, upon the trusts nevertheless, and to and for the ends, intents, and purposes hereinafter expressed and declared of and concerning the same; that is to say, upon trust, as soon as conveniently may be after my decease to get in and convert into money my said personal estate, and to enter into and upon my said real estate, and receive and take the rents, issues, and profits thereof; and also to lease my said real estate, or any part or parts thereof, from year to year or otherwise, and at such rents as to my trustees shall seem reasonable; and generally to manage and order all the affairs and business of or relating to my said real and personal estate. And I authorize and empower my said trustees from time to time in their discretion to sell and dispose of all or any part of my said real estate, by public auction or private contract, for the best price or prices that can be reasonably obtained for the same; and for that purpose to make and execute all necessary contracts and conveyances, with full power and authority to my said trustees to rescind, alter, and vary any contract so made, and to buy in any premises offered for sale, under the preceding powers, and resell the same in like manner, without being answerable or accountable for any loss, expense, or diminution in price or value. And I declare and direct that the moneys to
16 arise from the sale, conversion, and getting in of my said real and personal estate as aforesaid, shall be by my said trustees laid out and invested in or upon good stocks or mortgages upon real estate (but not upon any mere personal security,) and that it shall be lawful for my said trustees, from time to time, to alter, vary, and transpose the said investments for, into, or upon others of a like nature. And I declare and direct that my said trustees shall stand and be possessed of and interested in my said real and personal estate, and the investments aforesaid (subject to the preceding powers and provisions) upon the trusts hereinafter expressed and declared; that is to say, upon

General devise of realty and personalty upon trusts;

—for absolute conversion of personalty;

—and to lease realty;

—power to manage;

—discretionary power to sell realty;

—to make contracts and conveyances;

—to buy in and resell;

Trust moneys to be invested;

—power to vary investments;

—trustees to be possessed of trust property;

—upon trust to pay income to daughter and three sons for life; then for their children, at 21, with substitution of issue of grandchildren dying under vesting age;

trust, from time to time to pay the rents, profits, dividends, interest, and income of the said trust premises unto and equally among my four children, George Benjamin Ruggles, Amasa Mason Eaton, Charles Frederick Eaton, and Anna Grosvenor Eaton, for and during their respective natural lives, and after their respective deceases, either before or after my decease, then upon trust for such of the children of my said children respectively, as shall attain the age or respective ages of 21 years, or shall die under that age, leaving lawful issue living at his, her, or their decease, or respective deceases, and his, her, or their heirs and assigns forever, if more than one, as tenants in common; but so, nevertheless, that the respective child or children of each of my said children shall have his, her, or their parent's share or respective parents' shares only; and if any of my said children should die without leaving any child who shall survive me, and shall attain the age of 21 years, or die under that age, leaving lawful issue, living at his or her decease, then as to the share or respective shares, as well original as accruing, of such child or children respectively, upon the trusts herein declared, concerning the other share or respective shares. And as to all the said trust premises in case of the failure of all the limitations or objects of the preceding trusts in trust for my own right heirs forever.

— cross-remainders over as to shares of children dying with issue upon same trusts as original shares;

—on failure of all preceding limitations or objects, then for testatrix's own right heirs.

Provided always, that it shall not be lawful for my said daughter to sell, assign, encumber, charge, or dispose of, by way of anticipation or otherwise, the income so to her payable as aforesaid, or any part thereof; and that, notwithstanding any such charge, sale, assignment, or other disposition, my said trustees are hereby required to pay such income into the proper hands of my said daughter, for her separate and peculiar use and benefit, whether married or sole, upon her own receipts.

Daughter's share of income, to be for her separate and inalienable use.

17

Proviso for cessor of income as to sons on bankruptcy, alienation, etc.;

Provided also, that if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts; or if, by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same or any part thereof shall, or, but for this present provision, would belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or concerning so much thereof as should or would have so become vested in or payable to any other person or persons other than my said sons respectively as aforesaid, shall immediately thereupon cease and determine; and the same income shall be applied by my said trustees during all the then residue of the life of my said sons respectively in manner following; that is to say, upon trust to pay and apply the said income or such part thereof as aforesaid to and for the support and maintenance, or otherwise for the use and benefit of the wife, child, or children, for the time being, of my said sons respectively, or such one or more of such wife, child, or children, and in such manner as my said trustees in their

—after cessor, income to be applied for the benefit of sons' wife, and children;

discretion shall think proper, and as to such wife for her sole and separate and inalienable use; and in default of any object of the last-mentioned trust at any period during the life of my said sons respectively, and when and so often as the same shall happen, then, upon trust, from time to time, so long as such vacancy or want of objects shall continue, to accumulate and invest the income aforesaid in augmentation of the principal or capital thereof in the nature of compound interest, with power of changing investments as hereinbefore expressed; and in case at any time after my decease such accumulation should cease to be lawful, then, upon trust, to apply the said annual produce and income, or such part thereof as may not legally be accumulated
18 during said want of objects as aforesaid, in such and the like manner as the same would be applicable under the ulterior trusts of this my will.

—if none, to accumulate;

—proviso for cessor of accumulation of income;

Provided also, that in case at any future period circumstances should exist which, in the opinion of my said trustees shall justify or render expedient the placing at the disposal of my said children respectively, any portion of my said real and personal estate, then it shall be lawful for my said trustees, in their discretion, but without its being in any manner obligatory upon them, to transfer absolutely to my said children respectively, for his or her own proper use and benefit, any portion not exceeding one-half of the trust-fund from whence his or her share of the income under the preceding trusts shall arise; and immediately upon such transfer being made, the trusts hereinbefore declared concerning so much of the trust-fund as shall be so transferred shall absolutely cease and determine; and in case after the cessation of said income as to my said sons respectively, otherwise than by death as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons respectively would have been entitled under the preceding trusts in case the forfeiture hereinbefore provided for had not happened.

—power to transfer to sons' moiety of the trust-funds;

—discretionary power after forfeiture to apply income to or for the use of sons, or for the use of sons, their wives, and families;

I authorize my said trustees, during the minority of each of my said children and grandchildren, to receive and apply the whole or any part of the income to which, or to the share or property producing which, such child or grandchild shall be actually or presumptively entitled under this my will, whether such child or grandchild be also entitled to the share or property producing such income or not, towards his or her maintenance and education, in such manner as my said trustees shall think proper, and to accumulate and invest any unapplied income; such surplus income to follow the destination of the capital, but to be applicable, if required, for the maintenance and education of said minor or minors, with power to my said trustees to pay the said maintenance or education money to any person standing in the
19 place or stead of a parent to, or acting as guardian, whether duly authorized or not, of any such minor, without seeing to the application thereof, or taking notice

—maintenance of infant children and grandchildren;

—accumulation of surplus income;

—power to pay maintenance money to guardians;

whether such maintenance or education is or ought to be otherwise provided for.

—advancement; And I authorize my said trustees, in their discretion to apply any part, not exceeding one-half of the principal or value of the presumptive or vested share of each or any of my said children or grandchildren for his, her, or their advancement in life, or otherwise for his, her, or their benefit.

—power to appoint new trustees; I declare that any vacancy or vacancies occurring in any trusteeship under my will by death in my lifetime or afterwards, disclaimer, resignation, residence abroad, refusal to act, or incapacity, may be supplied by the trustee or trustees for the time being, including any retiring or disclaiming trustee or trustees, if willing to act, or, if there be no trustee willing to act, by the acting executors or administrators of the person who shall have last died in the trust, or if there be no such person by my acting executors or administrators, every such appointment to be made by any attested writing, and it shall not be necessary to supply all the vacancies at the same time; nevertheless it is my desire that so far as may be consistent with convenience there be always two trustees of my will: And I declare that every instrument purporting to be made in pursuance of the foregoing power, and not appearing on the face of it to be invalid, shall, though not so made, be valid for all purposes, and that every trustee appointed under this power shall immediately have all the powers of a trustee, although the trust property be not then vested in him, and that the trustees or trustee for the time being of my will may exercise any power or discretion hereby given to the trustees herein named; and I declare that the receipts in writing of my trustees, for the time being, shall be sufficient discharges to all persons for any moneys or property acknowledged to be received by them, and that no purchaser shall be obliged or concerned to enquire into the necessity or expediency of any sale under my will, and also that no purchaser, tenant, or other person shall be obliged to see to the application of any purchase money, rent, or other money, or be answerable for the application, misapplication, or non-application thereof.

Trustee's receipt-clause;

Appointment of executors and revocation of former wills.

20 I appoint the said William M. Bailey and my said sons, George and Amasa, executors of this my will; and hereby revoking all wills by me heretofore made, I declare this only to be my last will and testament.

In witness whereof I have hereunto set my hand and seal this 1st day of May, A. D. 1864.

(Signed) SARAH B. EATON. [L. S.]

The above-written will of the above-named testatrix, Sarah B. Eaton, was signed, sealed, published, and declared by her, as and for her last will and testament, in the presence of us, being all present at the same time, who, at her request, in her presence, and in presence of each other, have hereunto subscribed our names as witnesses.

J. G. MARKLAND.
W'M GROSVENOR.
ROSA ANN GROSVENOR.

B.

Know all men that I, Amasa M. Eaton, of North Providence, State of Rhode Island, in consideration of one dollar to me paid by Charles A. Nichols, of the city of Providence, in said State, the receipt whereof is hereby acknowledged, and no further consideration of the trusts hereinafter created, and by him to be performed, do hereby grant, bargain, sell, assign, transfer, convey, and confirm unto the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereby created, all the following-described estate and property, namely:

All my right, title, and interest in and to a lot of land situate in North Providence, bounded westerly by Hardenburgh street, northeasterly by the old Wenscot road, and southerly by a road running from the Douglass Pike into Hardenburgh street, being the same lot conveyed to me by Sarah B. Eaton, by deed dated the 30th day of December, 1862, reference thereto being had, my interest therein being one-third part.

Also, all my interest in and to one hundred and twenty shares of the capital stock of the Manufacturers' National Bank of Providence.

Also, all my interest in and to certain leases of lands on Elk River, West Virginia.

Also, all my shares in the capital stock of the New York and Providence Petroleum Company of New York.

Also, all my shares in the capital stock of the New York and Chicago Petroleum Company of New York.

Also, hereby assigning and conveying all estates and property of every kind belonging to me individually, wherever the same may be situated, except such property as is exempt from attachment by law.

To have and to hold all the same, with all the privileges and appurtenances thereof, to him, the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereinafter declared, always in trust, however, for the uses and purposes following, that is to say, in trust to take possession of all said estate and property, to insure and otherwise take care of the same for the interest of those concerned, to sell and dispose of the same at public or private sale in his discretion, to execute all conveyances and other instruments requisite to carry the trusts hereby created into full effect, with full power to submit any matter to arbitration and to make any just compromise, and collect all the proceeds of said assigned estate, and, after paying thereout all the costs, charges, and expenses of making and executing these trusts, and incidental thereto, together with a reasonable compensation to my assignee for his services as such, then, out of the residue—

First. To pay in full all the following individual debts and obligations of mine, namely: Five certain promissory notes, all made and signed by me, and all payable to my order, and all endorsed by William M. Bailey for my accommodation, these notes being of about the dates and for the amounts following, namely:

One dated October 26th, 1866, for two thousand dollars; one dated October 27th, 1866, for three thousand dollars; one dated October 31st, 1866, for fifteen hundred dollars; one dated November 5th, 1866, for three thousand dollars, and one dated November 9th, 1866, for fifteen hundred dollars; and to indemnify and save harmless William M. Bailey therefrom, and also to indemnify him from any other liabilities incurred by him for me individually, or for my individual accommodation.

Second. After paying all the preceding in full, then to apply the resi-

due thereof, ratably, to the payment of such other individual creditors of mine, and also to such creditors of the copartnership of Bailey & Eaton, as shall respectively make, execute, and deliver to my said assignee on or before the second day of September, A. D. 1867, a release under seal of all their several and respective claims against me, or against said copartnership, as the case may be.

In testimony whereof I hereunto set my hand and seal this first day of March, A. D. 1867.

(Signed) AMASA M. EATON. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY MARTIN.
ALBERT M. HEWITT.

THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS,
County of Providence, ss:

Be it known that in the city of Providence, in the county and State aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Henry Martin, a public notary for said county of Providence, personally appeared Amasa M. Eaton, to me personally known to be the individual described in and who has executed the foregoing instrument, and he acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said Providence, the day and year above written.

[NOTARIAL SEAL.] (Signed) HENRY MARTIN,
Public Notary.

[$25 internal-rev. stamps.]

23 C.

Know all men that we, William M. Bailey, jr., and Amasa M. Eaton, both of North Providence, in the county of Providence, State of Rhode Island, copartners transacting business under the firm and style of Bailey & Eaton, in consideration of one dollar to us, as copartners as aforesaid, paid by Charles A. Nichols, of the city and county of Providence, State of Rhode Island, and of the trust hereinafter created, and by him to be performed, do hereby grant, bargain, sell, assign, transfer, convey, and confirm unto the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereby created, all the following-described estate and property, namely:

1,685 shares Union Coal and Oil Company.
1,000 shares New York and Providence Petroleum Company.
250 shares Torch Lake Mining Company.
50 shares Ascot Mining Company.
50 shares Merchants' Union Express Company.
37½ shares East Providence Land Company.
$\frac{1}{5}$ interest in purchase Michigan mineral lands.
$\frac{3}{25}$ interest in leases of Elk River lands, West Virginia.
$\frac{1}{16}$ interest in Sterine Petroleum Well, Pennsylvania.
$\frac{1}{16}$ interest in schooner "Gov. J. Y. Smith."
$\frac{1}{32}$ interest in schooner "S. P. Hawes."

Hereby intending to convey, and hereby conveying, all our shares in the above-named corporations and companies, whatever the same may

be, and also hereby conveying all our right, title, and interest in and to all the real and personal estate and property of each and all said corporations and companies, wherever the said estate and property may be.

Also, all fixtures and property in store occupied by said firm on South Water street, in Providence, Rhode Island, and all oil, paraffine, wax, candles, and other property in any place in said city of Providence.

Also, all tanks, presses, machinery, fixtures, oils, paraffine, wax, and candles, axle-grease, barrels, casks, cans, sewing-machine oil, and
24 gun-oil, and all other property belonging to said firm situate partly in store No. 28 Canal street, in Boston, and partly in the factory estate occupied by us on Broadway, in Cambridgeport, Massachusetts, including herein all property of said firm at both said places.

Also, all oil, paraffine, wax, candles, gun-oil, sewing-machine oil, all fixtures and furniture, and all other property belonging to said firm in stores No. 32 Broadway and 75½ New street, in the city of New York.

Also, all oils, paraffine, wax, candles, gun-oil, sewing-machine oil, all fixtures and furniture, and all other property belonging to said firm in store No. 101 South Front street, and in any other store in the city of Philadelphia, Pennsylvania.

Also, all oils, merchandize, and property of every kind in transit, and wherever the same may be situate, belonging to said firm or copartnership.

To have and to hold all the same, with all privileges and appurtenances thereof, to him, the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trust hereinafter declared, always in trust, however, for the use and purposes following, that is to say, in trust to take possession of all said estate and property, insure and otherwise take care of the same for the interest of those concerned; to sell and dispose of the same at public or private sale in his discretion; to execute all conveyances and other instruments requisite to carry the trusts hereby created into full effect, with full power to submit any matters to arbitration and to make any just compromise, and to collect all the proceeds of said assigned estate, and after paying thereout all the costs, charge, and expense of making and executing these trusts and incidentals thereto, together with a reasonable compensation to our assignee for his services as such, then, out of the residue—

First. To pay out of said proceeds all sums of money due or owing from said firm to our clerks and laborers.

Second. After paying all the preceding in full, then out of the residue to pay in full all debts in any wise due or owing from our said firm to William M. Bailey and James Y. Smith, or to either of them, including herein all sums of money that may become due from us to them, or
25 either of them, by reason or in consequence of their, or either of their, being required to pay all or any part of our portion (as well as their own) of any debt or obligation where we and they are all liable. And also all debts and paper due or owing from our said firm on or for which William M. Bailey and James Y. Smith, or either of them, are or may be liable as endorsers, grantors, or in any other manner, and to indemnify and hold harmless in every respect the said William M. Bailey and James Y. Smith of and from all the same.

Third. After paying all the preceding in full, then to apply the residue thereof ratably to the payment of such other creditors of our said firm, as shall respectively make, execute, and deliver to our said assignee on or before the second day of September, A. D. 1867, a release under seal of all their several and respective claims against our said firm.

In witness whereof the parties hereto have respectively set their hands and seals this first day of March, one thousand eight hundred and sixty-seven.

(Signed) WM. M. BAILEY, JR. [L. S.]
AMASA M. EATON. [L. S.]

Signed, sealed, and delivered in presence of—
WILLIAM P. MORTON.
HENRY MARTIN.

THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS,
County of Providence, ss:

Be it known, in the city of Providence, in the county and State aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Henry Martin, a public notary for said county of Providence, personally appeared William M. Bailey, jr., and Amasa M. Eaton, to me personally known to be the individuals described in and who have executed the foregoing annexed instrument, and they severally acknowledged the same to be their free act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at Providence, the day and year above written.

[NOTARIAL SEAL.] (Signed) HENRY MARTIN,
Public Notary.

[$100 internal-rev. stamps.]

26 *Subpœna.*

RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to William M. Bailey, of North Providence, Amasa M. Eaton, of North Providence, and George B. Ruggles, of Glocester, all of said county of Providence, in said Rhode Island district, trustees under the last will and testament of Sarah B. Eaton, of North Providence, deceased, greeting:

For certain causes offered to our circuit court for the first circuit within and for the Rhode Island district. In chancery. We hereby command and strictly enjoin you, and each of you, that laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court in Providence, on Monday, the 4th day of April next, being the rule-day of said court, and then and there full, true, and perfect answer make upon your several corporal oaths to the bill of complaint of Charles A. Nichols, of the city and county of Providence, in the State and district of Rhode Island, assignee in bankruptcy of Amasa M. Eaton, of North Providence, in said Rhode Island district, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles,

any time a true and attested copy hereof at their several last and
the places of abode twenty days before the rule-day aforesaid.
obliges the Hon. Salmon P. Chase, our Chief Justice, at Providence,
gaven day of February, A. D. 1870.
th

HENRY PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return-day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

27 *Marshal's return.*

DISTRICT OF RHODE ISLAND,
Providence, February 24, 1870.

I have this day summoned the within-named Eaton, Bailey, and Ruggles to appear as within directed, by giving to each of them in hand a true and attested copy hereof.

R. SHERMAN,
U. S. Marshal.

Service, $6.00; copying, 1.50; travel, 1.20—$8.70.

Entry of appearance.—Filed March 24, 1870.

I hereby enter my appearance for the respondents in the above-entitled cause.

SAMUEL CURREY,
Solicitor.

Answer of Amasa M. Eaton.—Filed May 28, 1870.

The answer of Amasa M. Eaton, one of the defendants, to the bill of complaint of Charles A. Nichols, assignee in bankruptcy of the said Amasa M. Eaton, against the said Amasa M. Eaton and William M. Bailey and George B. Ruggles, trustees, etc.:

This defendant, reserving to himself all rights of exception to the said bill of complaint, for answer thereunto, or to so much and such parts thereof as he is advised is or are material and necessary for him to make answer unto, answering, saith:

That he admits it to be true that the said Sarah B. Eaton, named in the complainant's bill, departed this life on or about
28 the first day of August, 1864, seized and possessed of large real and personal estates of considerable value, but not of the value of $500,000, leaving three sons and a daughter, and a last will and testament of such date, purport, and effect as is shown in Exhibit A, annexed to the complainant's bill, but for greater certainty herein, this defendant craves leave to refer to said will, when produced, as proved and allowed by said court of probate of said town of North Providence, on said third day of October, 1864.

Admits that said testatrix appointed this defendant, with said other defendants, said William M. Bailey and George B. Ruggles, her trustees under said will, but this defendant denies that it is true that said other defendants have only nominally accepted said trust. Denies that the said George B. Ruggles was not accustomed to transact business, and not competent to perform the duties of said trust, or has not attempted

their performance, as has not exercised said office, and has left their hands
cretion in regard to the same to be exercised by this defendant, red and
by said William M. Bailey, and denies that this defendant was
son of the said testatrix at the time of the execution of said will
time of the filing of the complainant's said bill, doing any business
quiring capital, or incurring any pecuniary risk, and denies that it
true that this defendant has managed said trust-estate since the decease
of said testatrix, except in concurrence with said other defendant
trustees, otherwise than as said other defendants have generally de-
volved on this defendant as most convenient and least expensive, and
onerous to the said trust, the more active and immediate attention to
the details of the business, as in the collection of the rents and divi-
dends, in superintending improvements of the real estate, as agreed
upon between this defendant and the said other defendant trustees, in
the care and cultivation of the homestead farm and stock thereon, and
overseeing the labor upon the same, and in keeping the books of account
relating to the income, disbursements, and expenses of and pertaining
to said trust and trust-estate.

And this defendant, further answering, says, that said other de-
29 fendant trustees, immediately on the decease of the said testatrix,
took upon themselves, jointly with this defendant, the perform-
ance of the duties thereof; says that the said George B. Ruggles was
accustomed to transact business, and was competent to the duties of said
trust as associated therein with this defendant and the said William M.
Bailey, and has exercised said office in regard to the whole of said prem-
ises, save as above specified; and further says that the said George
B. Ruggles, before and at the time of the execution of said will, and
from thence to the present time, has been, and still is, engaged in business
on his own account, as a farmer, requiring and employing considerable
capital in the purchase and improvement of land, and in buying and
selling stock, and incurring all the ordinary pecuniary risks of such
business.

And this defendant, further answering, admits it to be true that in the
year 1862, this defendant and William M. Bailey, jr., named in the com-
plainant's bill, entered into business together, as copartners, under the
firm of Bailey & Eaton, they being young men without capital or credit,
except by the guarantees or letters of credit or endorsements of said
Sarah B. Eaton and William M. Bailey during the life of said Sarah B.
Eaton, and that after her decease, said firm of Bailey & Eaton was
partly assisted with credit and the means of carrying on their business,
by discounts of their commercial paper at said national bank, or Old
National Bank, and other banks, endorsed either by said William M.
Bailey, or by the said Bailey and James Y. Smith; but this defendant
denies that the moneys so obtained formed the only capital of said firm,
except for a few months after the decease of his said mother.

And as to the said endorsements of the said James Y. Smith, and the
said pretended representations of this defendant and said William M.
Bailey to procure the same, as regards the means and ability of this de-
fendant to pay his liabilities, as alleged in the complainant's said bill,
this defendant, protesting that he is not compellable to make answer in
relation to any such matters, and that the complainant is not by law en-
titled to be answered unto concerning the same, nevertheless further
answering says and denies that it is true that this defendant, or as
this defendant is informed and believes the said William M.
30 Bailey, at the commencement of said endorsements by said Smith,
or from time to time thereafter during their continuance, or ever at

any time, represented that this defendant had an equal one-third share of the very large estate left by his said mother, sufficient to meet all the obligations endorsed by said Smith, or always during said endorsements gave said Smith to understand that said property should be used for the payment of said liabilities, or that this defendant was able to pay and would pay all his obligations, or gave said Smith, while making said endorsements, or ever, at any time, assurances that this defendant's estate was sufficient to indemnify him, and would hold him harmless from any and all loss arising from the said endorsements.

And this defendant, further answering, says and avers it to be true, that this defendant, within a few months after the decease of the said Sarah B. Eaton, that is to say, between the 10th day of February, 1865, and the 25th day of March, 1865, put twenty-five thousand dollars in cash into said business of Bayley & Eaton, as capital to be used therein, and that this defendant obtained said sum of money for said purpose, as an advance made to him out of the said trust-estate by the said trustees, and out of the share thereof devised by the said testatrix, for the benefit of this defendant.

And this defendant, further answering, says and avers it to be true, that a large part of the business of said firm of Bailey & Eaton consisted of an interest as stockholders in a corporation known as the Union Coal and Oil Company, and as agents for the sale of the products of said company; that said James Y. Smith was a director and large stockholder in said company, and during a part of the time of said Bailey & Eaton's said agency the acting president of said company, and that the greater part of the paper of said Bailey & Eaton, endorsed by said Bailey and said Smith, as aforesaid, was paper connected with or made for the accommodation of the business of said Union Coal and Oil Company, and to promote its interests, and with the knowledge and by the advice of said Smith, and for his interest as such large stockholder in said company; and that another business interest of said Bailey & Eaton
31 was the purchase by them, upon the advice of said Smith, of a one-fourth interest in the East Providence Land Company, in which said Smith was one of the principal owners, a manager, and director.

And this defendant, further answering, says he admits it to be true, that this defendant, and also said firm of Bailey & Eaton, failed in business at such time, and made such respective assignments to the complainant, for the benefit of creditors, as are shown in said Exhibits B and C annexed to the complainant's said bill, but for greater certainty herein this defendant craves leave to refer to said assignments when produced.

Admits that the said Sarah B. Eaton, by her said will, devised all her real and personal estate to this defendant, and the said other defendants, in trust, as therein expressed, which said will contained the following provision, to wit: "And I declare and direct that my said trustees shall stand and be possessed of and interested in my said real and personal estate and investments aforesaid, (subject to the preceding powers and provisions,) upon the trusts hereinafter expressed and declared, that is to say, upon trust, from time to time, to pay the rents, profits, dividends, interest, and income, unto and equally among my four children, George Benjamin Ruggles, (meaning said other defendant, Ruggles,) Amasa M. Eaton, (meaning this defendant,) Charles Frederick Eaton, and Anna Grosgrove Eaton, for and during their respective natural lives, and after their respective deceases, either before or after my decease, then upon trust for such of the children of my said children respectively as shall attain the age or respective ages of twenty-one

years, or shall die leaving lawful issue living at his, her, or their decease, or respective deceases, and his, her, or their heirs and assigns, forever, if more than one, as tenants in common, but so nevertheless that the respective child or children of each of my said children shall have his, her, or their parents' share, only; and if any of my said children should die without leaving any child which shall survive me, and shall attain the age of twenty-one years, or die under that age, leaving lawful issue at his or her decease, then as to the share or respective shares, as well original as accruing, of such child or children respectively, upon the trusts herein declared concerning the other shares
32 or respective shares; and as to all the said trust premises in case of the failure of all the limitations or objects of the preceding trusts, in trust for my own right heirs forever."

And this defendant admits that said Anna Grosvenor Eaton deceased after the testatrix, on or about the day of April, 1865, sole and unmarried, and leaving no child or children.

And this defendant, further answering, here submits the question, as a matter of law, to the decision of this honorable court, that the provisions of said will, hereinbefore recited, are lawful and valid; and further submits that upon such decease, as aforesaid, of the said Anna Grosvenor Eaton, without child or children, her share and interest of, in, and to the rents, profits, dividends, interest, and income, in the said trust-estate, by force of the said limitations of said will, vested in equal portions in this defendant, and said other defendants, George B. Ruggles and the said Charles F. Eaton, by way of accruer, for their beneficial use during their respective natural lives, upon and subject to the same conditions, limitations, and trusts, as their respective original shares in the said trust premises.

And this defendant further submits that this defendant, neither by the provisions of said will, nor upon or by such decease as aforesaid of the said Anna Grosvenor Eaton, acquired, or has, or could have acquired, or become entitled to any legal interest, other than as trustee in the said trust-estate, or in any part thereof.

And this defendant further submits that no interest, legal or equitable, of this defendant, in the said trust-estate, or in any part thereof, was assigned and conveyed to the complainant for the benefit of creditors, or for any purpose, by the said hereinbefore-mentioned assignments of said Bailey & Eaton, or of this defendant.

And this defendant further submits that said firm of Bailey & Eaton had no power to assign and convey, and did not, by their said assignment, assign or attempt to assign and convey to the complainant any interest of this defendant in said trust-estate or in any part thereof.

And this defendant further submits that this defendant, by his said individual assignment, did not assign and convey, and
33 did not thereby attempt to assign and convey, and had no power to assign and convey to the complainant, so as to vest the same in him, any interest of this defendant in said trust-estate, or in the income of the same, or any part thereof; and not waiving any or either of the said matters of law, this defendant reserves any and all other matters of law which may arise upon the pleadings or proofs to be submitted in the cause to the judgment of the court.

And this defendant admits it to be true that this defendant filed his petition in bankruptcy in said United States district court and was adjudged a bankrupt, and that the complainant was appointed assignee of his estate in bankruptcy, and accepted such trust and qualified as the law directs, at such time and manner as in said bill is stated; and

further admits that claims of the amount and character stated in the said bill have been proved against this defendant's estate in bankruptcy, and that no assets have come to the hands of the complainant as such assignee, to pay said claims; but this defendant says, and here submits the question to the decision of this honorable court, that no interest of this defendant, legal or equitable, in the said trust estate, or in any part thereof, or in the income of said estate, or in any part of the same, was assigned and conveyed to the complainant on the execution of the assignment in said bankruptcy, of this defendant.

And this defendant further answering says that shortly after the execution by this defendant of his said individual assignment to the complainant for the benefit of creditors, and before the filing of his petition in bankruptcy, that is to say, on or about the day of 1867, the complainant, as assignee of this defendant, and by virtue of the power vested in him by said assignment, for a good and valuable consideration, bargained and sold to the said other defendant, George B. Ruggles, and the said Charles F. Eaton, all and singular the property, estate and effects, and all interest therein which were assigned and conveyed to the complainant by this defendant's said individual assignment.

34 And this defendant further answering says, and here submits, that the following provisions of said will are not nugatory and void, but are lawful and valid, namely: "Provided also, that if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts; or if, by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same or any part thereof shall, or, but for this present provision, would belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or concerning so much thereof as should or would have so become vested in or payable to any other person or persons other than my said sons respectively as aforesaid, shall immediately thereupon cease and determine; and the same income shall be applied by my said trustees during all the then residue of the life of my said sons respectively in manner following: that is to say, upon trust to pay and apply the said income or such part thereof as aforesaid to and for the support and maintenance, or otherwise for the use and benefit of the wife, child, or children, for the time being, of my said sons respectively, or such one or more of such wife, child, or children, and in such manner as my said trustees in their discretion shall think proper, and as to such wife for her sole and separate and inalienable use. And in default of any object of the last mentioned trust at any period during the life of my said sons respectively, and when and so often as the same shall happen, then, upon trust, from time to time, so long as such vacancy or want of objects shall continue, to accumulate and invest the income aforesaid in augmentation of the principal or capital thereof in the nature of compound interest, with power of changing investments as hereinbefore expressed. And in case at any time after my decease such accumulation should cease to be lawful, then, upon trust, to apply the said annual produce and income, or such part thereof as may not legally be accumulated during said want of objects as aforesaid, in such and the like manner as the same would be applicable under the ulterior trusts of this my will."

And this defendant submits that the following provisions of said will are not inoperative and void, but are lawful and valid, namely:

35 "Provided also, that in case at any future period circumstances should exist which, in the opinion of my said trustees, should justify or render expedient the placing at the disposal of my said children respectively any portion of my said real and personal estate, then it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to transfer absolutely to my said children respectively for his or her own proper use and benefit, any portion, not exceeding one-half of the trust fund from which his or her share of the income under the preceding trusts shall arise; and immediately upon such transfer being made, the trusts hereinbefore declared concerning so much of the trust fund as shall be so transferred shall absolutely cease and determine; and in case after the cessation of the income as to my said sons respectively, otherwise than by death as hereinbefore provided, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to, or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons respectively would have been entitled to under the preceding trusts, in case the forfeiture hereinbefore provided for had not happened."

And this defendant further answering admits that he has not, and never has had, either wife or children.

And this defendant further answering says and denies that it is true that the said trustees have exercised the discretion vested in them by or under said will or by or under the said recited provision thereof in or by means of paying to or applying for the use of this defendant as a beneficiary under said will, any portion of the income of said trust-estate at any time since his said bankruptcy or insolvency, and denies that said trustees have transferred to or placed at the disposal of this defendant any portion of the real or personal estate devised in said will, or of the said trust-fund, ever at any time since or about the 10th of February, 1865, and the 25th of March, 1865, and between those times.

36 And this defendant further answering says, and here submits the question to the decision of this honorable court, that said hereinbefore recited provisions of said will, relating to the accumulation of the income of any son of the testatrix in augmentation of the principal of said trust estate, on the forfeiture of such son of his right to receive the same, as therein provided, and in default of such wife, child, or children, to receive the same, is lawful and valid; and this defendant further submits that said hereinbefore recited provision of said will, which directs the application of such share of the income to and under the ulterior trusts of said will, in case such accumulation thereof, as therein provided, shall have ceased to be lawful, is lawful and valid, and is a good and effectual limitation over of the said income in any contingency which can or may arise under said will, or in the course of events.

And this defendant further submits the provision of said will hereinbefore recited, which vests in said trustees the discretion to pay over to a son or sons respectively of the testatrix a portion, not exceeding one-half of the trust-fund whence the share of the income of such son or sons respectively shall arise under the trusts of said will, after the insolvency, alienation or bankruptcy of such son or sons, is not in fraud of the policy of the law, but is lawful and valid. And this defendant further submits that the complainant is not entitled to a decree requiring the exercise of such discretion as aforesaid on the part of said trustees in favor of the creditors of this defendant, or any decree requiring said

trustees to pay over to the complainant any portion, share or part of the said trust-fund for the benefit of this defendant's creditors.

And this defendant further submits that the said defendant trustees ought not to be decreed to render an account of the estates devised in said will for the benefit of this defendant, or originally devised for the benefit of said Anna Grosvenor Eaton, or of the income derived therefrom, or any part of said trust estate during any period of said trust, or to pay over and convey to the complainant as such assignee as aforesaid in bankruptcy, any part, share or portion of the said trust estate, or any portion, share or part of the income thereof for or during any period of said trust, or to advance to the complainant out of the said trust estate, or of, or from the income thereof, or any part or share thereof, any sum for the payment of the debts of this defendant.

37 And this defendant further submits that the complainant is not entitled to a decree of this honorable court requiring any part, share, or portion of the future income of said trust-estate or any part thereof, to be hereafter paid to him as such assignee as aforesaid, or any decree restraining said trustees from paying or conveying to this defendant, for his own use, any portion of the income or principal of said trust-estate, or from permitting this defendant to receive or have in his hands all or any part of the income or principal of said trust-estate, or that this defendant may be restrained from receiving or having in his hands all or any part of the principal or income of the said trust-estate.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and only prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

AMASA M. EATON.

SAMUEL CURREY,
B. R. CURTIS,
Counsel for Respondents.

RHODE ISLAND DISTRICT, *sc.:*

On the 28th day of May, 1870, then personally appeared the above-named Amasa M. Eaton, and made oath that the statements contained in the aforegoing answer by him subscribed, made of his knowledge, are true, according to his knowledge, and those made upon information and belief are true, according to the best and utmost of his recollection, information, and belief. Before me,

HENRY PITMAN,
Clerk U. S. Circuit Court.

38 *Answers of William M. Bailey and George B. Ruggles.—Filed May 28, 1870.*

The joint and several answers of William M. Bailey and George B. Ruggles, two of the defendants, to the bill of complaint of Charles A. Nichols, assignee in bankruptcy of Amasa M. Eaton, against the said Amasa M. Eaton and these said other defendants, trustees, etc.

These defendants, reserving to themselves all right of exception to

the said bill of complaint, for answer thereunto, or unto so much and such parts thereof as they are advised is or are material or necessary for them to make answer unto, severally answering say that they admit it to be true that Sarah B. Eaton, named in the complainant's said bill, departed this life on or about the first day of August, 1864, seized and possessed of large real and personal estates of considerable value, but not of the value of $500,000, leaving three sons and a daughter, and a last will and testament of such date, purport, and effect as is shown in Exhibit A, annexed to the complainant's bill, but for greater certainty herein these defendants crave leave to refer to said will, when produced, as proved and allowed by said court of probate of said town of North Providence, on the 3d day of October, 1864.

Admit that said testatrix appointed these defendants, with said other defendant, Amasa M. Eaton, her trustees under the said will, but these defendants severally deny that it is true that they or either of them have only nominally accepted the trusts confided to them by said appointments.

Deny that this defendant Ruggles was not accustomed to transact business, and not competent to perform the duties of said trust, or has not attempted their performance and has not exercised said office, or has left the discretion in regard to the same to be exercised by the said Amasa, assisted by this defendant Bailey.

Deny that the said Amasa was the only son of the said testatrix,
39 at the time of the execution of said will to the time of the filing of the complainant's said bill, doing any business requiring capital or incurring any pecuniary risk, and

Deny that it is true that said Amasa has controlled and managed said trust-estate since the decease of the testatrix, except in concurrence with these defendants as his associate trustees, otherwise than as these defendants have generally devolved on him, as most convenient and least expensive, the more active and immediate attention to the details of the business, as in the collection of the rents and dividends, in superintending improvements of the real estate as agreed on between him and these defendants, in cultivating the homestead farm and looking after the labor thereon, in the care of the stock upon the same, and in keeping the books of account relating to the income, disbursements, and expenses of and pertaining to said trust and trust-estate.

And these defendants, further severally answering, say that they immediately, on the decease of said testatrix, accepted the trusts of said will and severally took upon themselves, jointly with each other and the said Amasa, the execution thereof; say that this defendant Ruggles was accustomed to transact business and competent to the duties of said trust as associated therein with the said other trustees, and has exercised said office in regard to the whole of the said trust premises, and they further severally say that this defendant Ruggles, before and at the time of the execution of said will, and from thence to the present time, has been and still is engaged in business on his own account as a farmer, requiring considerable investment and expenditure of capital in the purchase of land and stock and the hire of labor, and incurring all the ordinary pecuniary risks of such business.

And as to so much and such parts of said bill as relate to the business and failure of said firm of Bailey & Eaton, or to the endorsements of their paper by said Sarah B. Eaton and this defendant Bailey, or said Bailey and James Y. Smith, or whether this defendant Bailey and said Amasa M. Eaton, at the commencement of said endorsements by the said Smith, represented to him that said Amasa would put into

the business of said Bailey & Eaton $25,000 in cash, or at said
40 time and from time to time thereafter, during the continuance of said Smith's said endorsements, represented that said Amasa had an equal one-third share of the very large property and estate of said Sarah B. Eaton, sufficient to meet all the obligations of said endorsements, or represented to said Smith, and always during the said endorsements gave him to understand that said property should be used to pay said liabilities, and that said Amasa was able to pay and would pay all his obligations, or whether said Smith, in making his said endorsements, relied upon assurances of this defendant and the said Amasa, that said Eaton's estate was sufficient to indemnify him and would hold him harmless against loss arising from said endorsements, these defendants protesting that they are not, nor is either of them, compellable to make answer unto any such matters, and that the complainant is not by law entitled to be answered unto by these defendants or either of them concerning the same; severally answering say they have been informed, and believe it to be true, that in the year 1862 said Amasa M. Eaton and William M. Bailey, junior, entered into business together under said firm of Bailey & Eaton, as young men without capital or credit, except as obtained by the letters of credit or endorsements of said Sarah B. Eaton and this defendant Bailey during the life of said Sarah B. Eaton, and that after her decease they were largely assisted with credit and the means of carrying on their business by discounts of their paper endorsed by the said Smith and this defendant Bailey, though these defendants are informed, and believe it to be true, that shortly after the commencement of said Smith's said endorsements, to wit, between the 10th day of February, 1865, and the 25th day of March, 1865, said Amasa M. Eaton put into the business of said firm of Bailey & Eaton a cash capital of twenty-five thousand dollars, advanced to him for said purposes by these defendants, out of the principal of said trust-estate, in the exercise of their office of trustees, according to the provisions of said will.

Admit that said Bailey & Eaton and the said Amasa M. Eaton failed in business at such time and made such respective assignments of their respective properties to the complainant, for the benefit
41 of creditors, as are shown in said Exhibits B and C, annexed to the complainant's bill, though for greater certainty herein these defendants crave leave to refer to the said assignments when produced.

And this defendant, William M. Bailey, further severally answering, says he denies, and this defendant, said George B. Ruggles, believes such denial to be true, that this defendant Bailey, either by himself or with the said Amasa M. Eaton, at the commencement of said endorsements for said Bailey & Eaton by said James Y. Smith, or from time to time thereafter, during their continuance, or ever at any time represented that the said Amasa had an equal one-third share of the very large property and estate of his said mother, and sufficient to meet all the obligations endorsed by said Smith for said Bailey & Eaton, or always during said endorsements by said Smith gave him to understand that said property should be used for the payment of said liabilities, and that said Amasa was able to pay and would pay all his obligations, or gave said Smith, while making said endorsements, any assurances that said Eaton's estate was sufficient to indemnify him and would hold him harmless from loss arising from said endorsements.

And these defendants further severally answering, admit it to be true that said Sarah B. Eaton, by her said will, devised all her real and personal estate to these defendants and the said Amasa, in trust as therein

expressed, and contained the following provisions, to wit: "And I declare and direct that my said trustees shall stand and be possessed of and interested in my said real and personal estate and the investments aforesaid, (subject to the preceding powers and provisions,) upon the trusts hereinafter expressed and declared, that is to say, upon trust from time to time, to pay the rents, profits, dividends, interest and income of the said trust estate unto and equally among my four children, George Benjamin Ruggles, (meaning this defendant Ruggles,) Amasa M. Eaton, (meaning this defendant said Amasa M. Eaton,) Charles F. Eaton and Anna Grosvenor Eaton, for and during their respective natural lives, and after their respective deceases, either before or after my decease, then upon trust for such of the children of my said children respectively as
42 shall attain the age or respective ages of twenty-one years, or shall die under that age leaving lawful issue living at his, her, or their decease or respective deceases, and his, her or their heirs and assigns forever, if more than one as tenants in common, but so nevertheless that the respective child or children of each of my said children shall have his, her, or their parents' share or respective parents' share only; and if any of my said children should die without leaving any child which shall survive me, and shall attain the age of twenty-one years, or die under that age leaving lawful issue at his or her decease, than as to the share or respective shares, as well original as accruing, of such child or children respectively, upon the trusts herein declared concerning the other share or respective shares; and as to all the said trust premises, in case of the failure of all the limitations or objects of the preceding trusts, in trust for my own right heirs forever."

And these defendants, further severally answering, say and admit it to be true that the said Anna Grosvenor Eaton deceased after the said testatrix, on or about the day of April, 1865, sole and unmarried and leaving no child or children.

And these defendants, further severally answering, say and here submit the question, as a matter of law, to the decision of this honorable court, that the provisions of said will hereinbefore recited and the several limitations over of said trust estate are lawful and valid. And they further submit that upon such decease as aforesaid of the said Anna Grosvenor Eaton without child or children, her share and interest of, in, and to, the rents, profits, dividends, interest, and income in the said trust estate, by force of the said limitations of said will, vested in equal proportions in this defendant Ruggles, said defendant Amasa, and the said Charles F. Eaton, by way of accruer, for their beneficial use during their respective natural lives, upon, and subject to the same conditions, limitations, and trusts as their respective original shares in the said trust premises.

And these defendants further submit that the said Amasa, neither by the provisions of said will, nor upon or by such decease as aforesaid of the said Anna Grosvenor Eaton, acquired, or has, or could have acquired or become entitled to any legal interest other than as trustee in the said trust estate or in any part thereof. And they further submit that
43 no interest, legal or equitable, of the said Amasa in said trust estate, or in any part thereof, was assigned or conveyed to the complainant, for the benefit of creditors or for any purpose by said aforementioned assignments of said Bailey & Eaton or of the said Amasa. And they further submit that said firm of Bailey & Eaton had no power to assign and convey, and did not, by their said assignment, assign or attempt to assign and convey to the complainant any interest of the said Amasa in the said trust estate. And they further submit that the

said Amasa by his said individual assignment did not assign or convey, and did not thereby assign or attempt to assign and convey, and had no power to assign and convey to the complainant so as to vest the same in him any interest of him, the said Amasa, in the said trust estates, or in the income of the same, or any part thereof.

And these defendants severally further answering admit it to be true that the said Amasa filed his petition in bankruptcy in said United States district court, and was adjudged a bankrupt, and that the complainant was appointed assignee of his estate in bankruptcy, and are informed that he accepted said trust and qualified as the law directs at such time and manner as is stated in said bill, and that claims of the amount and character stated in said bill have been proved against his estate in bankruptcy, and that no assets have come to the hands of the complainant, as such assignee, to pay said claims; but these defendants say and insist, and here submit the question as a matter of law to the decision of this honorable court, that no interest, legal or equitable, of the said Amasa in the said trust-estate, devised in said will or in the income thereof, was assigned and conveyed to the complainant on the execution of the assignment in said bankruptcy of the said Amasa.

And this defendant Ruggles further severally answering says, and this defendant Bailey believes it to be true, that shortly after the execution by the said Amasa of his said individual assignment to the complainant, for the benefit of his creditors, and before the filing of his said petition in bankruptcy, that is to say, on or about the day of , 1867, the complainant, as assignee of the said Amasa, and by 44 virtue of the power vested in him by the said assignment, for a good and valuable consideration, bargained and sold to this defendant Ruggles and the aforenamed Charles F. Eaton, all and singular the property, estate, and effects, and all interest thereon, which were assigned and conveyed to the complainant by the said Amasa by his said individual assignment.

And these defendants further severally answering submit that the following provisions of said will are not nugatory and void, but that they are lawful and valid, namely: "Provided, also, that if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts; or if, by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same or any part thereof shall, or, but for this present provision, would belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or concerning so much thereof as should or would have so become vested in or payable to any other person or persons, other than my said sons respectively as aforesaid, shall immediately thereupon cease and determine. And the same income shall be applied by my said trustees during all the then residue of the life of my said sons respectively in manner following; that is to say, upon trust to pay and apply the said income or such part thereof as aforesaid to and for the support and maintenance, or otherwise for the use and benefit of the wife, child, or children, for the time being, of my said sons respectively, or such one or more of such wife, child, or children, and in such manner as my said trustees in their discretion shall think proper, and as to such wife for her sole and separate and inalienable use; and in default of any object of the last-mentioned trust at any period during the life of my said sons respectively, and when and so often as the same shall happen, then, upon trust, from time to time,

RHODE ISLAND DISTRICT, *sc.:*

On the 28th day of May, 1870, then personally appeared the above-named William M. Bailey and George B. Ruggles, and made oath that the statements contained in the aforegoing answer by them subscribed, made of their knowledge, are true according to their knowledge, and those made upon information and belief are true according to the best and utmost of their recollection, information, and belief. Before me.

HENRY PITMAN,
Clerk U. S. Circuit Court.

Replication of Charles A. Nichols to the answer of Amasa M. Eaton.—Filed August 16, 1870.

The replication of Charles A. Nichols, assignee in bankruptcy of Amasa M. Eaton, complainant, to answer of Amasa M. Eaton, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, mate-
49 rial or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By his solicitors,

HORATIO ROGERS.
C. S. BRADLEY.

Replication of Charles A. Nichols to the answer of William M. Bailey and George B. Ruggles.—Filed August 16, 1870.

The replication of Charles A. Nichols, assignee in bankruptcy of Amasa M. Eaton, complainant, to the joint and several answer of William M. Bailey and George B. Ruggles, two of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By his solicitors,

HORATIO ROGERS.
C. S. BRADLEY.

Examination of witnesses in behalf of the complainants before Sumner U. Shearman, examiner, at the office of the U. S. marshal of said district, commencing on the 22d day of April, A. D. 1871.

Deposition of William W. Hoppin.

WILLIAM W. HOPPIN, having been duly sworn according to law, testifies and says as follows:

1st question. What is your name and residence?

Answer. William W. Hoppin; reside in the city of Providence.

2d ques. Are you a register in bankruptcy for the district of Rhode Island, and did you hold that position during the year 1869?

Ans. I am, and held that position during the year 1869.

3d ques. Are you acquainted with Amasa M. Eaton of North Providence, a defendant in this cause?

Ans. I am acquainted with Mr. Eaton.

4th ques. Please state whether Amasa M. Eaton's petition in bankruptcy was referred to you late in 1868 or early in 1869; and if yea, whether he was examined before you; if so, when and by whom was such examination conducted; and state whether you swore said Amasa to the truth of said examination, and whether his answers were given in your presence, and submitted to writing by you in his presence.

Ans. His petition was referred to me in December, 1868. He
51 was examined before me, and the examination was conducted by the counsel, Judge Bradley and Mr. Currey. He was duly sworn by me. His answers were given in my presence and submitted to writing by me in his presence.

5th ques. Upon such examination was the said Amasa asked to give a statement of the property devised by the will of his mother, Mrs. Sarah B. Eaton, and the present condition of the same; if yea, who proposed such question, and what pieces of property did he state that such estate consisted of? I inquire as to the nature of property and not as to any statements of value.

Ans. My mind is refreshed by reference to notes taken at the time, and I have no doubt that such was the case. All the interrogatories were proposed by Judge Bradley. I have no recollection in regard to the pieces of property. It was not brought to my notice for the reason it was handed in by agreement of counsel in the form of statements by Mr. Eaton, and appended to the deposition, and marked by me, but which I did not read, and have no recollection that they were read at all at the examinations.

6th ques. Please to look at these two statements, and state whether they are the statements referred to by you in your last answer, as made by Mr. Eaton and marked by you.

Ans. They are, as appears by my mark.

7th ques. Will you please append copies of these statements marked B and C, referred to by you in your last answer, or such portions thereof as describes property, irrespective of the valuation affixed to the same?

Ans. I will do so.

8th ques. Upon such examination was the said Amasa asked if William M. Bailey and James Y. Smith were endorsers for the firm of Bailey & Eaton, of which said Amasa was a member, and to what extent; and if yea, what answer did he make?

(Objected to on the ground of its irrelevancy.)

Ans. Assuming my notes to be correct, of which I have no doubt, I answer in the affirmative; the question was put to him, and his answer was that these gentlemen were endorsers to the amount of $170,000.

52 9th ques. Have you any doubt, after examining those statements which you wrote at the time, that Mr. Eaton did thus state?

Ans. The fact that I noted it, leaves no doubt on my mind that such was the case.

10th ques. Will you please append a copy of that answer to your deposition, provided the same is furnished to you upon a certificate of the clerk?

Ans. I will

11th ques. Was said Amasa asked, upon such examination, this question: "Had your partner any property or had you any except that derived and bequeathed under said will?" (referring to his mother's will;) if yea, what reply did he make?

(Objected to as irrelevant.)

Ans. He was so asked according to my notes, and he answered that he had no other property except what was derived from or bequeathed under the will. As to the partner I do not recollect.

12th ques. Please state whether the fifth interrogatory upon such examination was as follows: "What capital had that partnership, and whence was it derived?" referring to the partnership of Bailey & Eaton; if yea, what answer did he make? Please refer to the examination made by you, if you do not recollect distinctly the reply.

(Objected to as irrelevant.)

Ans. According to my notes it was $25,000, and derived from the estate of the mother, Mrs. Eaton. [Witness is asked to give the exact language of his notes, which is objected to.] "The capital consisted partly of cash and partly of credit. The amount of cash capital furnished by me was $25,000; the remaining capital was furnished according to the wants of the business, by the notes of the firm endorsed by James Y. Smith and William M. Bailey."

13th ques. After reading that statement, have you any doubt that that was the answer of Mr. Eaton, and are you able to state that he made such answer?

Ans. I have no doubt. But I am not able to state that he made such answer.

53 14th ques. Have you any doubt of the fact that he made such answer?

Ans. If you should testify under oath that he did not make such answer, I could not testify under oath that he did, although my impressions are strong that he did, because there it is in my handwriting, the identity of which I am sure.

15th ques. Please state whether Mr. Eaton was called upon to state the mode in which the business of the trust under his mother's will had been conducted, and whether all the trustees had taken equal parts, and whether one or more acted for all.

Ans. According to my notes, I think he was.

16th ques. Please state the answer he made, after refreshing your memory by an inspection of your notes.

Ans. According to my notes, the answer was, the "business was carried on in general by the trustees. They have acted jointly in all matters of importance. Mr. Ruggles, living in Glocester, has not assisted in all the details. One or more of the trustees have acted for all when authorized so to do by the three trustees."

17th ques. Was he asked if such authority was in writing?

Ans. According to my notes, he was.

18th ques. What reply did he make?

Ans. The reply was, according to my notes, "I will produce a copy of the same," and did so, which is marked F. (Witness here identified the copy referred to, of which the following is a copy.)

(Copy)—In answer to 10th interrogatory:

"PROVIDENCE, *August 11th*, 1868.

"DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of estate of S. B. Eaton, or which may be collected for or deposited to the credit of said estate, upon orders or checks signed either by W. M. Bailey for the trustees or by Amasa M. Eaton for the trustees, and this shall be your sufficient authority for so doing.

"Yours truly,

"WM. M. BAILEY,
"G. B. RUGGLES,
"AMASA M. EATON,
Trustees.

"T. A. CRANSTON, Esq.,
"*Cashier Old National Bank, Providence.*"

54 19th ques. Did he furnish other copies of other powers of the same general character, and if so, will you annex to this deposition copies of such papers as were furnished by him, upon having the same made and certified by the clerk?

(Objected to as irrelevant.)

Ans. He did, and I will annex them to my deposition. I am able to identify the papers by my mark. Exhibit I, four papers.

20th ques. Please turn to your record of the examination of Mr. Eaton made before you, commencing at the 14th. Please state what questions and answers were addressed to him, and made by him from said 14th interrogatory to the close of the examination on that day.

(Objected to as incompetent and irrelevant.)

Ans. "What property have you received from the trust estate and applied to your own use and benefit? Answer. The sum that I advanced to the firm, viz: $25,000, which was advanced me by the trustees of my mother's estate and put into the business. The trustees have paid other bills for me. I cannot give an exact answer how much, but the books will show. The 15th interrogatory was: What amounts per annum have been thus paid? Answer. I could not tell from memory. 16th interrogatory. Has the income of one-third of the estate been thus paid? Answer. I should say generally that it had. 17th interrogatory. Can you not recollect about the amount thus paid the last year, or two years or three years? Answer. No, sir, I cannot. It varied a good deal. When I went to Europe the trustees paid my expenses. I went to Europe in October, 1867, and returned in April, 1868. 18th interrogatory. When was the last payment made to you or by you on your own account? Answer. It was during the last week—last Saturday, I think. 19th interrogatory. Do you mean to be understood to say that you have not any recollection of the amount paid by the trustees or by yourself, on your account, within the last year? Answer. I cannot state from memory now. 20th interrogatory. Have you any written statements of the expenditures made for your benefit by the trust-
55 ees, or any of them? Answer. I have not. No, sir. 21st interrogatory. Will you furnish in writing a statement of the money

or other property received by you, or applied by the trustees, or any of them, out of said trust property for your use or benefit, giving the amount and date of such appropriation?"

21st ques. Please turn to interrogatory 29th in that examination and state what such interrogatory was, and the answer made thereon.

Ans. "Interrogatory 29th. Is there an account kept between you as cestui que trust, and the true estate, and if so, with what have you been credited in that account? Answer. There is such an account. I have been credited with my share of the income."

22d ques. Please state whether the questions and answers that have just been read by you, are questions that were put to Mr. Eaton on such examination, and the answers thereto that were made by him.

Ans. I have no doubt of the fact, because I find them in my own handwriting.

23d ques. Please state what were the 31st and 32d interrogatories put to Mr. Eaton on such examination, and what answers he made thereto. (Objected to as irrelevant and incompetent.)

Ans. "Interrogatory 31st. By whom have the accounts of the trust estate been kept? Answer. By me generally. Interrogatory 32d. By whom else, and when and any one else? Answer. By William M. Bailey, jr., during my absence in Europe."

24th ques. Please state whether the questions and answers just read by you were questions put to Mr. Eaton on such examination and his answers thereto.

Ans. I think they were, because I find them in my own handwriting.

25th ques. Please examine this paper marked X and state whether you can swear that they are correct copies of questions and answers put to and made by Amasa M. Eaton upon his examination in bankruptcy, extending from May to July, 1869, as herein respectively numbered.

56 Ans. I examined them, compared them with the originals, and swear that they are correct.

Adjourned until Monday, the 24th instant, at 9½ o'clock a. m.

Cross-examination:

Ques. 1st. Please state what were interrogatories numbered 25, 27, and 33, propounded to said Eaton in his examination before you, mentioned in your direct examination, and his answers thereto.

Ans. By reference to my notes, I find they are as follows: "Interrogatory 25th. Has there ever been any agreement in writing between the trustees and yourself in regard to the income of the estate, or any portion of it? Ans. No, sir. Interrogatory 27th. Has there ever been an agreement not in writing in regard to the income of said estate received by you? Ans. No, sir. Interrogatory 33d. Who has received the dividends due the estate? Ans. The trustees."

Ques. 2d. State what was interrogatory numbered 36 in such examination of said Eaton, and his answer thereto, and annex copies of papers marked K and L annexed or filed by him in connection therewith?

Ans. "Interrogatory 36th. State what sums have been received by you from the trust estate, or expended by the other trustees on your account since your application. Give the dates and amounts of such sums, and the agreements, if any, upon which they have been received and expended. Answer. I will do it, but must have time to obtain the desired information."

Ques. 3d. Please turn to your answer to the 11th interrogatory in your direct examination, and comparing it with the answer of said

Eaton to interrogatory numbered 6, in his said examination before you, and say if his said answer was not, "I had nothing of any account."

Ans. Such was his said answer.

57 Direct examination resumed:

1st ques. You have been asked to give interrogatory numbered 33, propounded to said Eaton in examination before you, and his answer thereto. Please give the 34th interrogatory and the answer thereto.

Ans. "Interrogatory 34. By whom personally? Answer. They have very seldom been collected personally, and when so collected, generally by me. During my absence in Europe the collections were made by William M. Bailey, jr."

2d ques. Please state on what day interrogatory 36th was propounded to said Eaton, and answered by him in his examination before you, and also upon what day the paper marked L, referred to in the 2d question of your cross-examination, was annexed by said Eaton to his examination.

Ans. On Saturday, June 5th, 1869. The paper marked L was annexed on Thursday, July 29th, 1869.

3d ques. Please state whether the paper marked L was in your handwriting, and submitted to writing by you as given to you orally by Mr. Eaton, or was handed in to be annexed to his examination.

Ans. It was handed in by Mr. Eaton to be annexed, and is not in my handwriting.

WM. W. HOPPIN.

Adjourned until Tuesday, at 10 o'clock a. m.

Subscribed and sworn to before me, April 24th, 1871.

SUMNER U. SHEARMAN, *Examiner.*

B.

Statement of property devised by Sarah B. Eaton.

Shares: 173 American Bank.
11 " Insurance Company.
25 Arcade Bank.
42 Atlas Bank, Boston.
153 Blackstone Canal Bank.
25 Boston & Providence Railroad Company.
58 80 Boston & Worcester R. R. Company.
4 Boylston Bank, Boston.
40 City Bank, Boston.
25 Bank of Commerce, Boston.
115 Commercial Bank.
3 Eagle Bank.
40 Equitable Fire and Marine Insurance Company.
63 Exchange Bank.
50 Exchange Bank, Boston.
50 Fitchburg Railroad Company.
20 Gaspee Fire and Marine Insurance Company.
48 Globe Bank.
13 Globe Bank, Boston.
4 Hamilton Bank, Boston.
2 High Street Bank.
20 Hope Insurance Company.

2 Lower Glocester Turnpike Company.
121 Manufacturers' Bank.
115 Mechanics' Bank.
14 Mechanics and Manufacturers' Bank.
61 Merchants' Bank.
37 Merchants' Bank, Boston.
63 National Bank.
57 Bank of North America.
17 North Bank, Boston.
25 Phenix Bank.
8 Powder Mill Turnpike Company.
4 Providence Washington Insurance Company.
24 Providence & Worcester Railroad Company.
22 Roger Williams Bank.
39 Shawmut Bank, Boston.
13 State Bank, Boston.
10 Traders' Bank, Boston.
78 Tremont Bank, Boston.
116 Union Bank.
24 Union Bank, Boston.
13 Western Railroad Company.
38 Weybosset Bank.

59	U. S. 7-30, (loan of 1861,)	$9,500 00
	Note of C. F. Eaton	400 00
	Note of Sarah B. Meserve	40 00
	Note of Amasa Mason	500 00
	Joint note of G. B. Ruggles, A. M. Eaton, and C. F. Eaton.	450 00
	Mortgage-note, James Fisher	2,500 00
	Mortgage note, F. S. Church	3,000 00
	Note, Z. Allen, for $2,517.12, estimated about	600 00
	Due-bill, J. D. Frost	20 44
	Cash	377 92
	Farming stock and utensils, horses, carriages, oxen, wagons, and carts	7,520 88
	Household furniture, &c	
	Homestead estate of Oakland, in North Providence, consisting of about 160 acres of land, with improvements, taxed, according to my best recollection, at	60,000 00
	Real estate in the city of Providence, taxed about	35,400 00
	Sundry tracts of wild land in Ohio, according to my best recollection, consisting of about 1,200 acres, and taxed at	5,894 00

C.

Statement of present condition of property devised by Sarah B. Eaton.

Shares: 11 American Insurance Company, Providence.
173 American National Bank "
153 Blackstone Canal Bank "
115 Commercial Bank "
40 Equitable Fire and Marine Ins. Co., "
20 Gaspee " " " "
20 Hope " " " "
Glocester Turnpike Company.
6 Merchant's National Bank, Providence.

63 National Exchange Bank "
63 Old National Bank "
60 25 Phenix National Bank, Providence.
8 Powder Mill Turnpike.
4 Providence Washington Ins. Co.
24 Providence & Worcester R. R. Co.
38 Weybosset National Bank.
42 Atlas National Bank, Boston.
5 Boylston " "
13 Globe " "
6 Hamilton " "
37 Merchants' " "
25 National Bank of Commerce, Boston.
40 National City Bank, Boston.
24 National Union Bank, "
20 North National Bank, "
9 State " "
39 Shawmut " "
10 Traders' " "
104 Tremont " "
5 Boston & Albany R. R. Co

U. S. bonds, 5-20's $5,500 00
Endowment policy on life of Amasa, in Mutual Life Ins. Co. of New York, for $20,000.....
Promissory note, Rufus Waterman..... 10,000 00
Mortgage bonds, Providence and Central Falls Horse Railroad Company, a $1,000..... 2,000 00
Cash 555 33
Shares. 38 Rhode Island National Bank, Providence.....
22 Roger Williams " " .....
116 Union Bank, Providence.....
Farming stock and utensils, horses, carriages, oxen, wagons and carts, household furniture, &c., estimated value about..... 7,500 00
Homestead estate of Oaklands, in North Providence, consisting of about 160 acres of land, with improvements, taxed at..... 60,000 00
Real estate in the city of Providence, taxed at about 30,000 00
Sundry tracts of wild land in Ohio, consisting, I think, of about 1,200 acres, and taxed at..... 5,894 00

61 *Exhibit I annexed by witness in answer to 19th question.*

(I.—Copy.)

PROVIDENCE, *Nov.* 3, 1864.

DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of Mrs. Sarah B. Eaton, or which may be collected for or deposited to the credit of estate of Sarah B. Eaton, only upon orders or checks signed by Amasa M. Eaton for the executors, and this shall be your sufficient authority for so doing.

Respectfully yours,

W. M. BAILEY,
G. B. RUGGLES,
AMASA M. EATON,
Executors of Sarah B. Eaton.

To F. A. CRANSTON, Esq.,
Cashier of National Bank, Providence, R. I.

(I².—Copy.)

PROVIDENCE, *Feb.* 16, 1867.

DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of estate of Sarah B. Eaton, or which may be collected or deposited to the credit of said estate, only upon orders or checks signed by Amasa M. Eaton, for the trustees, and this shall be your sufficient authority for so doing.

Yours truly,

W. M. BAILEY,
G. B. RUGGLES,
AMASA M. EATON,
Trustees.

F. A. CRANSTON,
Cashier Old National Bank, Providence.

(I³.—Copy.)

PROVIDENCE, *Sept.* 27, 1867.

DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of estate of Sarah B. Eaton, or which may be collected for or deposited to the credit of said estate, only upon orders or checks signed by W. M. Bailey, for the trustees, and this shall be your sufficient authority for so doing.

Yours truly,

W. M. BAILEY,
G. B. RUGGLES,
AMASA M. EATON,
Trustees.

F. A. CRANSTON,
Cashier Old National Bank, Providence.

62 (I⁴.—Copy.)

PROVIDENCE, *June* 8, 1868.

DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of estate of Sarah B. Eaton, or which may be collected for or deposited to the credit of said estate, only upon orders or checks signed by Amasa M. Eaton for the trustees, and this shall be your sufficient authority for so doing.

Yours, truly,

W. M. BAILEY,
G. B. RUGGLES,
AMASA M. EATON,
Trustees.

F. A. CRANSTON,
Cashier Old National Bank, Providence.

K.

1868, Dec.	24.	Cash	$9 42	
	29.	"	90 00	
1869, Jan.	5.	"	72 97	
	25.	"	9 41	
	26.	"		$2 50

		30.	"		5 85	
		30.	"		34 88	
	Feb.	2.	"		20 00	
		2.	"			50
		9.	"			27
		13.	"			3 00
		17.	"			40
		27.	"			2 00
	Mar.	1.	"		11 00	
		19.	"		33 00	
		24.	"		11 83	
	April	1.	"			50
		3.	"			1 00
		5.	"		48 50	
		5.	"		29 00	
		7.	"			3 53
		13.	"		2 50	
		14.	"		10 00	
	1869.					
63	April	17.	Cash	$3 50		
		19.	"			$20 00
		19.	"	10 00		
		22.	"			50
		24.	"	2 00		
	May	1.	"	79 45		
		8.	"	6 00		
		9.	"		7 20	
		15.	"	4 00		
		18.	"	100 00		
		20.	"	76 07		
	June	9.	"	13 77		
		12.	"	23 40		
				$706 55	$41 40	

L.

I annex statement in answer to interrogatories 35 and 36. Said sums of money were drawn by myself while in charge of the estate as one of the trustees and having the principal care of said estate, devoting the greater part of my time to such care and in superintending improvements on the real estate, and do not amount to more than I consider myself entitled to as a compensation for my said services. I had an express understanding with Mr. Bailey, the senior trustee, that I should not consider money so drawn and expended by me as received as a beneficiary of said estate, nor as paid by the trustees to or for me, but as money for which I should be accountable.

X.

4th. int. Was your partner in business Mr. Bailey's son; when did the partnership commence and when terminate; were Mr. Bailey and Gov. Smith your endorsers in that business, and to what extent?

Ans. He was. The partnership commenced in 1862, I think,
64 and terminated in 1867. Mr. Bailey and Gov. Smith were the endorsers of Bailey & Eaton. Their endorsements amounted to about

$180,000 at the time of Bailey & Eaton's failure. The failure occurred about 1st March, 1867. The exact amount of the whole endorsements in the business can be ascertained by examination of Bailey & Eaton's books, which are now in possession of Charles A. Nichols, assignee of Bailey & Eaton and my asssignee in bankruptcy. I could give the exact amounts if I could have access to said books.

5th int. What capital had that partnership, and whence was it derived?

Ans. The capital consisted partly of cash and partly of credit. The amount of cash capital furnished by me was $25,000. The remaining capital was furnished according to the wants of the business, by the notes of the firm, endorsed by James Y. Smith and William M. Bailey.

6th int. Had your partner any property, or had you any except that devised and bequeathed under said will?

Ans. No, sir. I never understood that my partner had any. As for myself, I had nothing of any account.

8th int. State the mode in which the business of the trust under said will has been conducted. Have all the trustees taken equal parts; has one or more acted for all?

Ans. I am advised by my counsel that I am not obliged to answer this question; still, I will answer it. The business was carried on in general by the trustees; they have acted jointly in all matters of importance. Mr. Ruggles, living in Glo'cester, has not assisted in all the details; one or more of the trustees have acted for all when authorized so to do by the trustees.

9th int. Was such authority in writing?

Ans. It was.

14th int. What property have you received from the trust-estate and applied to your own use and benefit?

Ans. The sum that I advanced to the firm, viz, $25,000, which was advanced to me by the trustees from my mother's estate and put into the business. The trustees have paid other bills for me. I cannot give an exact answer how much, but the books will show.

15th int. What amounts per annum have been thus paid?

Ans. I could not tell from memory.

65 16th int. Has the income of one third of the estate been thus paid?

Ans. I should say generally that it had.

17th int. Can you not recollect about the amount thus paid the last year, or two, or three years?

Ans. No, sir, I cannot; it varied a good deal. When I went to Europe the trustees paid my expenses. I went to Europe in October, 1867, and returned in April, 1868.

18th int. When was the last payment made to you or by you on your own account?

Ans. It was during the last week—last Saturday, I think.

19th int. Do you mean to be understood to say that you have not any recollection of the amount paid by the trustees or by yourself on your account within the last year?

Ans. I cannot state from memory now.

20th int. Have you any written statements of the expenditures made for your benefit by the trustees or any of them?

Ans. I have not. No, sir.

21st int. Will you furnish in writing a statement of the money or other property received by you or applied by the trustees or any of them

out of said trust property for your use or benefit, giving the amount and date of such appropriation?

29th int. Is there an account kept between you as cestui que trust and the trust-estate, and if so, with what have you been credited in that account?

Ans. There is such an account. I have been credited with my share of the income.

31st int. By whom have the accounts of the trust-estate been kept?

Ans. By me, generally.

32d int. By whom else, and when by any one else?

Ans. By William M. Bailey, jr., during my absence in Europe.

I certify that the above and foregoing are correct copies of questions put to and answers made by Amasa M. Eaton upon his examination in bankruptcy before me, as numbered above, respectively, extending from May to July, 1869.

WM. W. HOPPIN,
Register in Bankruptcy.

66 *Deposition of Amasa M. Eaton.*

AMASA M. EATON, having been duly sworn according to law, testifies and says as follows:

1st int. What is your age, residence, and are you a defendant in this suit?

Ans. Age, twenty-nine; residence, North Providence; I am one of the defendants.

2d int. Please give a statement of the property devised by your mother's will, irrespective of value, where values are not necessary for the description of items.

Ans. I refer to exhibit B, filed with my examination in bankruptcy before Register Hoppin; such a copy of which as is called for is appended to the deposition of said Hoppin, and is marked B. That is my answer to this question.

3d int. Please give a statement of the present condition of the property devised by your mother, irrespective of value, where values are not necessary to the description of items. By present I mean, at the date of your examination in bankruptcy, beginning April 27th, 1869.

Ans. I refer in the same manner to exhibit C, filed by Register Hoppin.

4th int. Please state whether since that time any changes have taken place in said property by sales, and if so, what property has been sold, and at what prices. Please state particularly.

(Objected to. 1st part of 4th interrogatory waived by plaintiff's counsel, and also the last part, meaning the words "please state particularly.")

Ans. I decline to answer in detail unless upon being compelled to do so by an order of the court. The trustees have sold various pieces of property, and the deeds on record in North Providence will show what prices have been received.

5th int. Do you decline to state the quantity of land sold and the prices received?

Ans. I do not remember the quantities of land sold and the prices received.

67 6th int. Do you not remember any of the lots sold or the prices received?

Ans. I do.

7th int. Please state what lots you remember have been sold and the prices at which they were sold.

Ans. Sundry lots on Oaklands farm, varying in price from $175 to between $600 and $700, as nearly as I can remember.

(Plaintiff's counsel here requests examiner to note that William M. Bailey, one of the trustees, is conversing with the witness.)

8th int. Will you produce a list of lots of land of your mother's estate that have been sold, wherever situated, the size of said lots, and the prices at which sold, and the time when sold, since the probate of your mother's will?

Ans. I will not, unless directed to do so by the order of the court.

9th int. Please state what offers have been made to the trustees under your mother's will for the purchase of property of your mother's estate.

Ans. I keep no record of such offers.

10th int. Please state according to the best of your recollection.

Ans. I decline to state such recollections unless directed by the court.

11th int. Please state whether the trustees under your mother's will have, to your knowledge, offered any pieces of property of your mother's estate for sale. If yea, what, and at what prices?

(Plaintiff's counsel here requests examiner to note that defendant's counsel advises him to answer these questions.)

(Defendant's counsel suggests that the question be confined to the date of the filing of the bill, February 14th, 1870. Thereupon the complainant asks the witness to divide the answer to the question, by speaking first of transactions prior to that date, and then of transactions subsequent thereto.)

Ans. The trustees have kept no records of such offers, concerning which and all of these matters I have nothing to conceal; but I
68 do not feel bound to state the private business of the trust estate, unless I am so directed to do by the court. This answer applies to all the preceding similar questions also.

12th int. There are allegations in the bill in this case as to the value of the property derived by the witness from the will of his mother, and in which his creditors claim that they have rights. Those allegations are denied in the answer, and counter-allegations are made as to such value. The object of these questions is to place before the court the real value of that property. As you say you have nothing to conceal, do you still object to answering such inquiries?

(Defendant's counsel here again advises witness to answer the questions put to him.)

Ans. I have declined to answer such questions, because I thought them irrelevant, until the court had decided that my creditors had an interest in what was my interest in my mother's estate; not "of the property derived by the witness from the will of his mother." But I have nothing to conceal, as I stated, and am advised by my counsel to answer. I am therefore ready to answer.

(Defendant's counsel here objects to so much of interrogatories numbers 9 and 11 as relates to transactions by the trustees since the filing of the bill in this case, February 14th, 1870.)

13th int. In answering the questions heretofore addressed to you, numbered 9 and 11, in regard to the offers made by or to the trustees, please answer each question separately, so that the offers made subsequently to the date mentioned may be separately stated from the offers made prior thereto.

Ans. My recollection is necessarily very indefinite in reply to a question covering so many years and so many offers, not all of which led to sales.

14th int. Did you, in your examination in bankruptcy, in answer to inquiries as to the property you received from the trust estate and applied to your own use and benefit, and as to whether one-third of the income of the estate devised and bequeathed by the will of your mother, had been thus paid, answer "I should say generally that it had?"

Ans. I did.

69 15th int. Did you also, in answer to an inquiry as to whether an account had been kept between you, as cestui que trust, and the trust estate; and, if so, with what have you been credited in that account, answer "There is such an account. I have been credited with my share of the income?"

Ans. I did so answer; but I should have stated that I did this individually, and not by direction of the trustees.

16th int. Do you mean to be understood as saying that you had drawn one-third of the income of that estate from year to year, and taken to yourself that third on the books which stated the transactions of the trust estate without the knowledge and consent of either of the other trustees?

Ans. I state nothing of the kind.

17th int. Do you mean to be understood as saying that the other trustees, or either of them, did know that you received one-third of the income of the trust estate?

Ans. They knew that I drew such sums as I needed to pay for my support, and I expected to be credited upon settlement by the trustees with a proper compensation for my time and services then given almost entirely to the estate.

18th int. You say "then given." The inquiry relates to your receipt of income, and to the knowledge of the other trustees concerning it during the whole period of the trust. Is the answer you have just given intended to cover the entire period of the trust?

Ans. In January, 1867, the trustees settled the accounts and divided the income. My answer refers to the time since said January, 1867, when the accounts were last settled by the trustees.

19th int. Will you produce a copy of the settlement of that account and annex it to this deposition?

Ans. I will.

20th int. Have you had any settlement with the trustees since that time; and if so, when?

Ans. There has been none since then made by the trustees.

21st int. What portion of the income of the estate have you received and applied to your own use since that time?

Ans. In my examination in bankruptcy, I submitted a copy of

70 a personal account kept by me of the moneys drawn by me or paid for me by the estate. I refer to said exhibits or said accounts. They embrace the whole period of time from my mother's death to my assignment in bankruptcy. The exhibit I refer to is Exhibit H, a copy of which I will annex to my deposition.

22d int. Did you also, at the time of your examination in bankruptcy, annex an exhibit marked K, giving an account of your receipts from December 24th, 1868, to June 12th, 1869? If so, is the same correct, and will you annex a copy thereof to this deposition?

Ans. I did. The same is correct, and I will annex a copy to this deposition.

23d int. Did you, in connection with the Exhibit K, last referred to, file an Exhibit L, as a further answer to interrogatories 35 and 36? Was said Exhibit L a correct statement, and will you file a copy of the same in connection with your answer to this question?

Ans. I did. It was a correct statement. I will file a copy as requested.

24th int. Did you have the express understanding therein referred to with Mr. Bailey, when you went into bankruptcy or after going into bankruptcy?

Ans. At the time when I went into bankruptcy. I think a day or two afterwards. I cannot be sure as to the exact time.

25th int. Are you sure that you did not have such an understanding until about that time, whatever the date may be?

Ans. I think not; but am not sure.

26th int. Was the understanding in writing?

Ans. No, sir.

27th int. Did you ever have any arrangements in regard to your receipts from the estate, or rather in regard to your rights to retain the same, with the other trustees in writing?

Ans. I did not.

28th int. Have you received, in point of fact, substantially the same proportionate part of the income during each of the successive years of the trust and up to the present time?

Ans. Upon my failure I considered retrenchment necessary, and have since then reduced my expenses of living, and have drawn only what was necessary to meet them.

71 29th int. Have the trustees objected to your drawing what you thought necessary for your support?

(Interrogatory 29th withdrawn.)

30th int. Can you not recall any particular persons to whom any offers for sale have been made by the trustees, or of persons who have made offers to the trustees, or cases in which prices have been fixed or named by the trustees, or to the trustees, as the values of certain portions of the trust estate?

Ans. I remember one case, in which sundry indefinite talks had been held with Mr. George H. Corliss, which never led to anything.

31st int. Can you recall any other case, without naming parties?

Ans. Various Irishmen have applied to me at various times to buy lots.

32d int. Are these all the cases which you can recollect?

Ans. I remember one instance this winter of a gentleman who asked the price of land in Pleasant Valley, North Providence, but I have not seen him since on that subject.

33d int. Was any price named in the transaction referred to with Mr. Corliss, and if so, what was the price, by whom named, and what the quantity of the land?

Ans. I do not remember the price, as the matter never led to anything.

34th int. Have you had any agreement as to the value of your services to the estate; if so, when, with whom, and for what amount?

Ans. I have. This spring, at a meeting of the three trustees, for the amount of $425 a year from the date of the last settlement. I mean January, 1867.

35th int. Was that the first time any such agreement was made?

Ans. It is.

36th int. Do you mean by Exhibits H and K to give a full statement

of all the moneys received by you, or expended for you, by the trustees, from the first to the last dates of those accounts?

Ans. I do, barring any clerical error, which I do not think exists.

72 (Defendant's counsel, proposing to take Mr. Eaton's deposition-in-chief, waives a cross-examination.)

AMASA M. EATON.

Adjourned until Wednesday, at ten o'clock a. m.

Subscribed and sworn to before me this 26th day of April, A. D. 1871.

SUMNER U. SHEARMAN,
Examiner.

H.

Amasa M. Eaton in account with estate of S. B. Eaton.

DR.

1864.	August	31.	Cash	$31 67
	September	30.	"	2 66
	October	31.	"	3 73
		31.	"	10 00
		31.	Old paper	18 96
	November	12.	Champlin bill	31 83
		12.	Peck bill	17 45
		14.	Bailey & Eaton bill	18 52
		16.	Rawson bill	66 50
		18.	Najac bill	43 71
		19.	Pratt bill	7 00
		21.	Stewart bill	9 02
		21.	Bright bill	243 92
		30.	Cash bill	25 00
	December	10.	A. D. Denison bill	155 05
		12.	Vose & Huxford bill	42 76
		13.	Snell bill	16 66
		15.	Read bill	8 93
		27.	Sundries	7 78
		31.	Cash	177 25
		31.	"	575 00
		31.	Vose & Huxford bill	34 00
		31.	Cash	6 00
		31.	School tax	2 23
73	1865.			
	January	5.	Moore bill	38 83
		5.	Snell bill	22 66
		5.	Calif bill	7 00
			Sundries	4 71
		31.	Cash	199 24
	February	1.	Horse, &c	326 33
		6.	Horse	87 53
		10.	Cash	10,509 37
		10.	Bowen bill	12 50
		10.	Buchanan bill	166 66
		10.	Chace bill	32 66

	17.	White bill		22 08
	27.	McAnn bill		7 00
	28.	Sundries		12 36
	28.	Cash		115 00
March	6.	Cash	3,	527 50
	7.	Miller bill		18 00
	10.	Congdon bill		4 39
	10.	Welcome bill		58
	22.	Sherman bill		4 27
	25.	Cash		172 50
	25.	Bank stock	11,	797 50
April	1.	L. B. & Pardee bill		154 16
	5.	Cash		11 50
	7.	Interest on bank stock		338 01
	7.	Sundries		9 19
	7.	Cash		25 00
	8.	"		175 00
	8.	Page bill		105 68
	10.	Wages		14 67
	12.	Cash		36 00
	13.	"		500 00
	14.	"		225 00
	24.	Sundries		4 58
May	6.	Wages		31 75
	6.	Wages		2 50
	6.	Peirce bill		142 50
	8.	Hodges bill		33 67

1865.

May	9.	Sundries bill	22 23
	10.	Burks bill	6 56
	13.	Wages	6 00
	13.	Wages	25 00
	19.	Sundries	85 46
June	2.	Cash	12 50
	7.	Kelley bill	20 20
	12.	Herreshoff & Stone bill	7 05
	11.	Wages	10 00
	13.	Vose & Huxford bill	30 00
	13.	Sundries	31 09
	13.	Cash	66 66
	27.	Horse in settlement	33 33
	27.	Cash	25 00
July	5.	Sundries	88 17
	5.	Horse	350 00
	17.	Wages	21 00
	17.	Guano	54 75
	19.	Sundries	17 94
	26.	Sundries	85 77
August	3.	Wages	39 00
	30.	Hodges bill	10 00
September	9.	Sundries	99 43
	15.	Cash	43 80
		Sundries	95 85
	21.	Sundries	20 51
	29.	Wages	16 23
October	7.	Cash	616 78

			Revenue tax	138	25
		18.	M. Hopkins bill	148	70
		18.	Internal-revenue tax	1	00
		19.	Wages	40	00
		21.	Cash	39	80
		24.	Sundries	105	33
		30.	Cash	190	96
		30.	O'Neil bill	73	33
	November	6.	North Providence tax	14	60
		8.	Cash	107	75
	1865.				
75	November	11.	Cash	1	5 00
		14.	"	4	95
		17.	"	170	00
		17.	Peck bill	33	33
		21.	Webster bill	7	25
		22.	Wages	18	50
		27.	Tillinghast bill	9	44
	December	12.	Cash	172	02
		12.	"	45	00
		12.	"	30	53
		13.	Sundries	118	88
		16.	Cash	49	58
		23.	"	6	93
		30.	"	25	00
1866.	January	3.	"	37	25
		3.	"	36	00
		4.	"	333	61
		4.	"	86	58
		5.	"	30	00
		6.	"	21	00
		10.	Barrett bill	22	87
		11.	Sundries	69	90
		15.	O'Neil bill	93	94
		15.	North Providence tax	180	84
		17.	Cash in correction	6	00
		17.	"	2	00
		17.	"	12	00
		22.	"	35	33
		25.	"	37	50
		31.	Rent	500	00
	February	6.	Cash	27	10
		15.	Sundries	13	05
		16.	Cash	205	13
		21.	"	344	96
		23.	"	344	37
	March	3.	Sundries	84	84
		10.	Cash	269	50
		14.	Sale bill	25	50
	1866.				
76	March	21.	Cash	100	00
		22.	Hay	29	09
	April	11.	Cash	222	50
		12.	"	216	88
		18.	"	50	00
		19.	Sundries	78	38

	20.	Healy bill		21 75
	23.	Wages		19 18
	23.	Cash		70 00
	28.	Wages		10 00
May	8.	Wages		58 92
	9.	Sundries		36 85
May	23.	Cash		125 75
	28.	"		6 15
	29.	"		38 00
June	2.	"		10 40
	4.	"		1,500 00
	6.	Sundries		59 92
	6.	Chairs		9 00
	7.	Wages		30 00
	12.	Sundries		47 08
	16.	Whitewashing		8 00
	11.	Wages		12 50
	30.	"		6 00
July	2.	Johnston bill		4 87
	3.	Peirce bill		227 21
	5.	Wages, etc		36 20
	5.	Cash		250 00
	12.	"		130 00
	13.	"		38 00
	19.	Lumber		4 52
	21.	Oats, 25.12; cash, 15.00		40 12
	23.	O'Neil bill		52 17
	24.	Hay		16 63
	25.	Sundries bills		141 68
August	11.	Rowell bill		8 33
	15.	Sundries		47 83
	15.	Interest		3,462 11
1866.				
August	15.	Rent		375 00
	15.	Shares joint account		761 61
	15.	Wages		15 00
September	3.	"		15 00
	5.	Cash		12 50
	12.	Wages		25 68
	15.	Joslin bill		11 75
	15.	Wages		14 37
	11.	Revenue tax		7 50
	22.	Leonard bill		11 34
	26.	Wages		13 00
	26.	Hawkins		40 76
	29.	Wood bill		127 50
	29.	Coal		25 00
October	1.	Purchase of George		200 00
	2.	Wages		12 00
	11.	M. Hopkins bill		50 70
	13.	Bradley bill		10 67
	13.	Cash		19 00
	15.	"		15 00
	19.	Patt bill		42 50
	24.	Robinson bill		13 26
	24.	Hawkins bill		27 47

		24.	Phillips bill	6 07
		27.	O'Neil bill	68 67
		29.	Wages	12 50
		31.	Thurber bill	10 75
	November	6.	Wages	12 50
		7.	North Providence tax	14 60
		7.	Herreshoff & Stone bill	35 65
		7.	Wages	10 00
		7.	Hawlin bill	7 73
		10.	Wages	30 75
		13.	Sundries	41 41
		16.	Wages	12 50
		17.	Gorham's bill	38 50
		20.	Gladding's bill	67
		24.	Sundries	33 02
	1866.			
78	November	28.	Wages	69 74
	December	4.	Sundries	2 27
		4.	Hawkins	68 95
		6.	Sleigh	97 26
		6.	Morse bill	15 00
		17.	Wages	18 37
		18.	Chace & Cartwright bill	10 32
		22.	Wages	11 00
		27.	Sundries	10 23
		28.	Cash	25 37
		28.	Bradford bill	1 47
		30.	Wages	6 50
		31.	Freight	1 00
1867.	January	1.	Cash	18 75
		5.	Sundries	107 98
		5.	"	25 75
		5.	Peirce bill	33 05
		7.	Eli bill	12 85
		8.	Phillips bill	2 69
		8.	Rider bill	7 75
		8.	Herreshoff bill	161 96
		12.	Sundries	25 84
		21.	Bartlett bill	12 00
		24.	Sundries	15 12
		31.	Hawkins bill	49 57
		31.	Sundries	11 40
		31.	Cash	5 00
		31.	Rent	750 00
		31.	Interest	1,120 05
	February	9.	Hawlin bill	15 59
		14.	Barnaby bill	19 00
		20.	Cash	2,000 00
		27.	Shattock & Stranahan bill	8 85
		27.	O'Neil bill	4 00
				$51,069 42

79 *Amasa M. Eaton, in account with estate of S. B. Eaton.*

CR.

1864.	December	9.	Paid A. Maxon for account of estate.	$1,404 83
1865.	June	3.	Interest in pair of horses	177 78
		26.	Cash	25 00
	August	3.	"	200 00
		9.	"	29 50
		21.	Sundries	14 62
		29.	In correction	15 00
	October	21.	Cash	2 10
	December	12.	"	21 40
		13.	"	2 00
		28.	"	136 48
1866.	January	14.	"	2 00
		17.	"	5 33
	February	16.	In correction	25 00
	April	19.	Cash	4 59
	May	12.	"	273 85
	June	14.	"	60
	July	5.	"	2 50
		5.	"	1,458 00
	August	11.	Rowell bill	25 00
		11.	Charged to advancement	25,000 00
		11.	Tax	5 84
		15.	In correction	33 33
		15.	" "	250 00
		15.	Tax	180 84
		15.	Share income account	11,577 60
	September	5.	Cash	25 00
		5.	"	300 00
		15.	"	212 11
		18.	"	25 00
		25.	"	250 00
		29.	"	255 00
	October	4.	"	484 00
		24.	"	100 00
		27.	"	137 34
80	October	29.	"	25 00
		31.	"	21 50
	November	20.	Gladding's shawl	5 00
		24.	Cash	200 00
		27.	"	137 90
	December	4.	"	300 00
		6.	"	22 50
		6.	Sleigh sold	194 52
1867.	January	12.	Cash	500 00
		12.	"	18 75
		19.	Sleigh sold	130 00
		31.	Income account	2,418 48
	February	2.	Cash	30 00
		4.	"	300 00
		9.	"	250 00
		27.	"	200 00
		57.	O'Neil bill	2 00

	March	8.	Bible, paid by A	12 00
	April	2.	Cash	100 00
	May	2.	"	100 00
	June	1.	"	100 00
		13.	In correction	2,000 00
		13.	Cash	46 00
		13.	"	18 75
	July	10.	In correction	44 12
		13.	Cash	100 00
		31.	Income account	2,041 82
	November	9.	Cash	9 16
1868.	January	31.	"	220 21
	February	25.	"	69 52
	May	8.	"	24 00
		22.	"	5 90
		27.	"	27 00
	July	31.	"	65 00
		31.	"	38 25
	August	12.	In correction	9 06
	September	5.	Cash	7 00
	December	10.	"	47 50
				$52,502 27

81

H.

Answer to interrogatories 22 *and* 35.

I annex exhibit marked H, in answer to interrogatory 22, giving such account up to the date of my petition in bankruptcy, since which time I have had nothing paid to me by the trustees, or any of them, as a beneficiary under the will. Being one of the trustees, having the management of the details of the trust-estate, which has required about all my time, I have drawn considerable sums of the trust-money to expend on the estate, and have used small sums for my individual support, not exceeding a fair compensation of my services, but concerning which I have had no settlement with the trustees. I do not understand that I am required by law to render an account of my dealings or business since the date of my petition, and submit this question to the court.

K.

Statement in answer to interrogatories 35 *and* 36.

1868.	Dec.	24.	Cash	$9 42	
		29.	"	90 00	
1869.	Jan.	5.	"	72 79	
		25.	"	9 41	
		26.	"	.....	$2 50
		30.	"	5 85	
		30.	"	34 88	
	Feb.	2.	"	20 00	
		2.	"	.....	50
		9.	"	.....	27
		13.	"	.....	3 00
		17.	"	.....	40

	27.	"	.....	.....	2 00
March	1.	"	.....	11 00	
	19.	"	.....	33 00	
	24.	"	.....	11 83	
April	1.	"	.....	.....	50
82 April	3.	Cash	.....	.....	1 00
	5.	"	.....	48 50	
	5.	"	.....	29 00	
	7.	"	.....	.....	3 53
	13.	"	.....	2 50	
	14.	"	.....	10 00	
	17.	"	.....	3 50	
	19.	"	.....	.....	20 00
	19.	"	.....	10 00	
	22.	"	.....	.....	50
	24.	"	.....	2 00	
May	1.	"	.....	79 45	
	8.	"	.....	6 00	
	9.	"	.....	.....	7 20
	15.	"	.....	4 00	
	18.	"	.....	100 00	
	20.	"	.....	76 07	
June	9.	"	.....	13 77	
	12.	"	.....	23 40	
				$706 55	$41 40

L.

Reply to interrogatories 35 and 36.

I annex statement in answer to interrogatories 35 and 36. Said sums of money were drawn by myself while in charge of the estate as one of the trustees, and having the principal care of said estate, devoting the greater part of my time to such care and in superintending improvements on the real estate, and do not amount to more than I consider myself entitled to as a compensation for my said services. I had an express understanding with Mr. Bailey, the senior trustee, that I should not consider money so drawn and expended by me as received as a beneficiary of said estate, nor as paid by the trustees to or for me, but as money for which I should be accountable.

83 *Deposition of George H. Burnham.*

GEORGE H. BURNHAM, having been duly sworn according to law, testifies and says as follows:

Int. 1st. What is you name; what is your age; where do you reside, and what has been your business for the last seven years?

Ans. My name is George H. Burnham. I reside in Providence. My age is thirty-nine years. My occupation, for the last seven years, since 1864, has been that of a real-estate broker and auctioneer, and stock broker.

Int. 2d. Are you acquainted with the value of real estate in Providence and its vicinity?

Ans. I am.

Int. 3d. Please state what means you have had for gaining such knowledge.

Ans. The means I have had is the business in which I have been engaged, being often called upon to appraise real estate and also in selling real estate. I have sold more real estate, I should think, than all the other auctioneers in the State put together.

Int. 4th. Please state whether you are acquainted with the homstead estate and farm of the late Sarah B. Eaton, in North Providence, containing about 160 acres.

Ans. I know where the estate is situated, having often passed by and have often seen it. 1 have been on portions of it often at various times.

Int. 5th. What, in you opinion, is the value per acre of said farm, and what is the whole value of the homestead and farm?

Ans. There are some portions of the land of more value than others. Some parts of the land would bring $1,500 per acre and some not over $500. That would be a small portion of the estate, I should judge, that would not bring over that price. The estate would average, I should say, about $1,100 per acre. The whole value, according to my estimate, would figure up to about $176,000, if there is 160 acres, as I have been told there is, and as I judge there is from the lay of land.

84 Int. 6th. Are you acquainted with *th* the real estate belonging to the late Sarah B. Eaton, situated in the city of Providence?

Ans. I know the location of that also.

Int. 7th. Please state what, in your opinion, is its value.

Ans. The land near India Point, on the James B. Mason plat, the lots are of different value, according to location. I should judge, on an average, the land would be worth 23 cents per square foot. The lots belonging to Sarah B. Eaton's estate are those to which I have reference. The value of the lots would be somewhere in the neighborhood of $14,000, I think. This estimate includes nothing but the land.

Int. 8th. Do you know anything about any other land belonging to Mrs. Eaton's estate?

Ans. There is a lot of land situated at the corner of Eddy and Pine streets with which I am familiar. There is a lot of land at that point the value of which I should estimate at $3.50 per foot; there is something over 10,000 feet in the lot. The whole value would be $36,000 or $37,000.

Int. 9th. Please state whether you are acquainted with the value of the stocks of the banks of Providence and Boston, with the stocks of insurance companies in Providence, and with the stocks of prominent railroads leading into Providence and Boston.

Ans. I am familiar with most of those stocks, those which are commonly in the market.

Int. 10th. Please look at the list of stocks now presented to you, and state what, in your opinion, is the value per share of said stocks. Please append said list to your deposition, and put the value per share against each stock.

Ans. I will do so, and mark it A.

Int. 11th. Please state what banks on the list appended to your deposition are not national banks.

Ans. Union and High Street, of Providence. The Arcade Bank is now the Rhode Island National, and the Machanics and Manufacturers' Bank is now the Fifth National. The other banks have the same names, with the addition of the word national incorporated into their titles.

85 I am not so familiar with the Boston banks, but I think the same is true as regards them.

Int. 12th. Please state whether the Boston and Worcester Railroad,

the Western Railroad, and the Boston and Albany Railroad, are one and the same railroad.

Ans. The stock is quoted as one road, as the Boston and Albany Railroad. They have been consolidated.

Int. 13th. Please state whether the Gaspee Fire and Marine Insurance Company is now in existence; if not, do you know what per share said company was wound up for?

Ans. It is not now in existence. It was wound up some three or four years ago; what they paid on their par value I do not know.

Cross-examination:

Int. 1. Are you familiar with the bounds of the Sarah B. Eaton estate?

Ans. I do not know the exact bounds. I know about where the lines are.

GEO. H. BURNHAM.

Subscribed and sworn to before me the 26th day of April, A. D. 1871.

SUMNER U. SHEARMAN,
Examiner.

A.

American Bank	$54
Arcade Bank (same as Rhode Island National. (See forward)	26²
Atlas Bank, Boston	121
Blackstone Canal Bank	26
Boylston Bank, Boston	150
City Bank, "	109
Bank of Commerce, Boston	124²
Commercial Bank	53
Eagle Bank	57
Exchange Bank	63
Exchange Bank, Boston	165
86 Globe Bank	57²
Globe Bank, Boston	135
Hamilton Bank, Boston	128
High Street Bank	45
Manufacturers' Bank	109
Mechanics' Bank	56
Mechanics and Manufacturers' Bank, (now 5th National)	55
Merchants' Bank	54²
Merchants' Bank, Boston	126
National Bank	110
Bank of North America	59
North Bank, Boston	118
Phenix Bank	75
Roger Williams Bank	76
Shawmut Bank, Boston	120
State Bank, "	102²
Traders' Bank. "	115
Tremont Bank, "	129
Union Bank	50
Union Bank, Boston	140
Weybosset Bank	55
Rhode Island National Bank	26²

American Insurance Company 73
Equitable Fire and Marine Insurance Company 52
Gaspee " " " " .....
Hope Insurance Company 40
Providence Washington Insurance Company 40
Boston & Providence R. R. Co 158
Boston & Worcester, Western, and Boston & Albany R. R. Co 157
Fitchburg R. R. Co 137
Providence & Worcester R. R. Co 143

87 *Deposition of Arba B. Dike.*

ARBA B. DIKE, having been duly sworn according to law, testifies and says as follows:

Int. 1st. What is your name, and where do you reside, and what has been your business for the last thirty years and upwards?

Ans. Arba B. Dike, Providence; my business has been that of auctioneer, stock and real-estate broker, for more than thirty years up to within about five years.

Int. 2d. Did you, while in such business, deal largely in real estate situated in Providence and its vicinity; and, if yea, have you, since you retired from business, kept posted in regard to values of real estate?

Ans. I have, and since leaving the auction business I have kept posted, still having a desk in my late office, and have paid attention to the sale of real estate and its value.

Int. 3d. Are you acquainted with the homestead estate and farm of the late Sarah B. Eaton, situated in North Providence, and containing about 160 acres?

Ans. I am.

Int. 4th. Please state what, in your opinion, is the average value per acre of said farm, and how much, in your opinion, said homestead and farm are worth.

Ans. I should consider it was well worth, at an average price, $1,100 per acre, which would amount to $176,000 for the estate, at an estimate of 160 acres.

Int. 5th. Are you acquainted with the real estate in Providence belonging to the estate of the late Sarah B. Eaton?

Ans. I am.

Int. 6th. Please state what, in your opinion, is the value of such real estate.

Ans. There is a number of lots on the James B. Mason plat, so called, which would vary in value. But I should say they would be well worth 23 cents per foot, not taking into account the improvements on some of the lots, which would amount for the whole valuation to about
88 $14,000, and including a house there and improvements would amount to $16,000. There is another lot of land on the corner of Eddy and Pine streets, containing over 10,000 feet, that I should estimate the value at $3.50 per foot, which would amount to $38,000 for the whole.

Int. 7th. Please state whether the values you have given of the lands in North Providence and Providence are minimum values or extreme full values.

Ans. I should consider them minimum values. If I had the means I should be very glad to become interested in the purchase of those estates at those valuations.

Cross-examination:

Int. 1. Do you know the valuation made by the assessors in North Providence and Providence of the said lands of the said Eaton estate?

Ans. I have been told that the farm in North Providence was assessed at $60,000, and in Providence I rely upon the assessors' books, and I find in reference to that, that on the J. B. Mason plat the lots there on an average are valued at a fraction over 11 cents. I should say 11½ cents. And the lot on the corner of Pine and Eddy streets at $2.25 or $2.50 per foot.

Int. 2. Have not all these lands risen in value during the last two years and a half; and, if yea, at what rate per cent.?

Ans. I think they have risen in value. I think it would be very difficult to give an opinion upon the rate per cent. Some portions of the lands have perhaps risen more than others, owing to local circumstances in part perhaps; but there has been a general inclination upwards.

ARBA B. DIKE.

Adjourned until Thursday, at 10 o'clock. Thursday, Mr. Currey, counsel for defendants, being unable to be present, adjourned until Friday, at 10 o'clock.

Subscribed and sworn to before me on the 26th day of April, A. D. 1871.

SUMNER U. SHEARMAN,
Examiner.

89 *Deposition of James Y. Smith.*

JAMES Y. SMITH, having been duly sworn according to law, testifies and says as follows, in answer to interrogatories propounded by Horatio Rogers, jr., and C. S. Bradley, of counsel for complainant:

Int. 1. What is your name, where do you reside, and what is your business?

Ans. James Y. Smith; city of Providence; manufacturer.

Int. 2. Please state whether you endorsed the paper of Bailey & Eaton, between Mrs. Eaton's death in 1864, and Bailey & Eaton's failure in 1867; and, if yea, to what amount?

Ans. I did, and was obliged to pay between $170,000 and $180,000.

Int. 3. Please state the average and usual amount of their paper which your name was on at one time during the period of your endorsing.

Ans. I should think about the large sum named. The gross amount endorsed was about $1,500,000 during the period.

Int. 4. Please state under what circumstances you made these endorsements.

Ans. Made the endorsements by the request of William M. Bailey for Bailey & Eaton, under his name, after the decease of Mr. Eaton's mother, he assuring me that there was ample property to secure me, as Mr. Eaton was to receive one-quarter of his mother's estate. He also showed me a list of property afterwards of Mrs. Eaton's estate; a large landed estate of perhaps 150 or 200 acres of land of great value; a long list of stocks, bonds, and securities. He spoke of their being very valuable, most of them being above par.

Int. 5. Please state whether these representations were or were not made more than once, and whether they were ever made in the presence of any other person who was interested in the business. If so, who?

Ans. I think they were made more than once by showing the list of

securities. I am quite clear that Amasa M. Eaton was present once. I don't know but twice.

90 Int. 6. Please state whether or not Mr. Eaton heard the conversation or took part therein.

Ans. I think he heard the conversation, but doubt if he took part, as Mr. Bailey always spoke for him.

Int. 7. Please state whether at and prior to this time you were endorsing Mr. William M. Bailey's paper; if yea, to what amount and upon what securities?

(Objected to.)

Ans. I was endorsing his paper for various sums, and was called upon to pay over $140,000; was secured by a mortgage upon his estate signed by his wife, given when I commenced endorsing, to secure the endorsements.

Int. 8. Please state on what pieces of property this mortgage was on, and the amount that you realized on said mortgage as indemnity for endorsing.

(Objected to.)

Ans. Weybosset block; and I think Westminster block. It is the same property right through. They were previously mortgaged to the Providence Institution for Savings for $36,000, after paying which I realized about $105,000. Mr. Bailey owned four-fifths of both blocks.

Int. 9. Please state whether you made said endorsements upon any consideration; if yea, what? Please state separately in regard to the endorsements for William M. Bailey and those for Bailey & Eaton.

(Objected to.)

Ans. I never received any consideration for endorsing for William M. Bailey, neither did I receive any compensation for endorsing for Bailey & Eaton.

Int. 10. What were the inducements that influenced you to endorse for Bailey & Eaton?

(Objected to.)

Ans. To accommodate William M. Bailey, feeling that it was perfectly secure from his statement concerning the property of Mrs. Eaton and the interest Mr. Eaton was to receive from it.

91 Int. 11. Please state the relations of yourself and Bailey & Eaton to the Union Coal and Oil Company. Please state how you got into it, how much stock you owned; what you had to do with its management, the amount of its capital, who the other parties were that were concerned it it, and especially the connection of Bailey & Eaton with the company and its business.

(Objected to.)

Ans. I was invited by William M. Bailey to dine with some Kentucky gentlemen at his house when this matter was first introduced. I think Mr. Bailey & Eaton were there. The matter was discussed as being a very splendid thing. Several things occurred for a period of time, after which William C. Chapin communicated with me from New York, saying he had bought this property, and expected me to take $100,000. Mr. Bailey thought it was a good thing. I demurred; was finally induced to take $25,000. Mr. Chapin, from ill-health, was obliged to go to Europe, and wanted me to take his place while he was absent, acting president. I objected. Was induced finally to say that I would, Mr. Bailey assuring me there would be little to do, Mr. Bailey being the treasurer, at a salary of $3,000 per year at this time. About this time I learned that Bailey & Eaton were large stockholders in this concern, the stock being furnished without cost, they being the brokers to get the new

company made up. That was the idea that I received. This was afterwards proved, they being stockholders of over 1,600 shares. The capital was $1,000,000, I think. The other parties were W. C. Chapin, Bailey & Eaton, William M. Bailey, Joseph Lee, Rowse Babcock, several gentlemen in Kentucky, some in Boston and Lawrence—I do not remember their names—and myself. Bailey & Eaton were agents for the company, selling their oils and other articles in Boston, New York, and Providence; I think receiving a commission of ten per cent. and other charges on the sales of their products.

Int. 12. Please state whether, prior to your taking stock in this company, any representations were made to you by Bailey & Eaton concerning the property of said company; if so, what were the nature of said statements?

(Objected to.)

92 Ans. They represented the property as being of great value always before the time of the sale to us, the various people that bought it. William M. Bailey, jr., having visited the property and personally inspected it, represented it of great value.

Int. 13. Please state whether, at the time of such representations and purchase of said stock, you knew that Bailey & Eaton were to receive any of this stock in case of sale?

(Objected to.)

Ans. I did not understand that they were to be the recipients of stock, as it proved. I also learned that William C. Chapin required them to give back some of their stock, considering it as a hardship on the company. I mean the stock that they received for selling this property.

Int. 14. What amount of stock was held by the other stockholders respectively?

(Objected to.)

Ans. I think Mr. Chapin had 3,500 shares, about; Bailey & Eaton, between 1,600 and 1,700; Joseph Lee, I should think, was 1,100; William M. Bailey, 613; Rowse Babcock, 612½. I had 612, and there were other smaller ones. I do not recollect now how much each had.

Int. 15. Who managed the business of said company?

(Objected to.)

Ans. Directors had meetings once or twice a year; sometimes oftener. The president and treasurer, with the agents, Bailey & Eaton, most of the time; Bailey & Eaton being the only agents away from Maysville, Kentucky, for selling the property.

Int. 16. What was the total number of shares in said company?

Ans. I think ten thousand was the final number fixed upon.

Int. 17. Please state what was the indebtedness of the company to Bailey & Eaton at the time of their failure.

(Objected to.)

Ans. In the final settlement of the company's accounts with the assignee of Bailey & Eaton, it was stated, I think, as $40,000; the loss that Bailey & Eaton sustained in selling their products, or overacceptances by Bailey & Eaton. Both were merged in their account.

93 Int. 18. Have you ever received any indemnity from Bailey & Eaton for the endorsements which you have paid for Bailey & Eaton; if so, to what amount and in what way?

(Objected to.)

Ans. Never have received one cent.

Int. 19. Please state whether or not you have received from the assignee of Bailey & Eaton's estate any amount towards repaying you for

what you have paid on Bailey & Eaton's paper endorsed by you; if yea, to what amount?

(Objected to.)

Ans. About $60,000, from their assignee, C. A. Nichols.

Int. 20. Have you received any amount from William M. Bailey's estate, or from any other source, upon your endorsements for Bailey & Eaton and the money paid by you thereon?

(Objected to.)

Ans. I don't think I have.

Int. 21. Please state whether you have received anything from the sale of any pieces of William M. Bailey's property assigned to you that you have applied in any way, or which you have the power to apply in any way, towards the payment of the paper of Bailey & Eaton on which you and William M. Bailey were endorsers?

(Objected to.)

Ans. I do not think the receipts will any more than pay William M. Bailey's deficiency under the assignment for endorsing for him and other accounts.

Int. 22. How far do the receipts under William M. Bailey's assignment fall short of providing for your liabilities for him and his indebtedness to you?

(Objected to.)

Ans. I do not think there will be much deficiency when the accounts are all settled.

Int. 23. When you say not much, please state whether you take into account the amount of indebtedness upon this paper of Bailey & Eaton, upon which William M. Bailey was endorser prior to yourself?

(Objected to.)

94 Ans. I mean not much for William M. Bailey's paper alone, but about $100,000 where he is endorser before me for Bailey & Eaton.

Int. 24. Please state your connection and that of Bailey & Eaton with the East Providence Land Company.

(Objected to.)

Ans. I rode down to Burges Point with William M. Bailey the day a sale was to be made by him of some property that he had the management of. Mr. Bailey thought it would be a good thing to buy the property. I did not agree in that view of it. Still, he said let us buy the property; let Bailey & Eaton take a quarter, Mr. Richard J. Arnold a quarter, and you a quarter—meaning me. I will take a quarter. I consented, although I did not think much of it. The property was bid off for $12,100, I think. The Boston and Providence Railroad Company were the other bidders. Each of the four parties named afterwards put in $3,750 apiece. Bailey & Eaton were appointed the agents, I think, and laid out some $25,000 or $30,000 filling lands, &c., buying mud-machines, for which they made a debt of about $30,000 on the property, and that is about their condition of indebtedness now, I think. Mr. Bailey was either the administrator or the trustee of the Tristam Burges property. The land bought was part of that property.

Int. 25. Please state what amount of money Bailey & Eaton paid for their interest in the East Providence Land Company, and what amount their interest was afterward sold for by their assignee?

Ans. $3,750 was the amount they were to pay for the quarter. I think it sold for $750. The party that bought it was obliged to endorse for the company to the amount of about $37,000, to carry the indebtedness of the company.

Int. 26. Did you advise Bailey & Eaton to make this purchase?

Ans. I never was asked concerning it.

Int. 27. Did you ever examine the will of Mrs. Eaton, or take any advice concerning the same, prior to assuming the relation of endorser for Bailey & Eaton, of which you have spoken?

(Objected to.)

95 Ans. I never did. The assurance of Mr. Bailey that all was right, at that time was satisfactory to me; he assuring me that everything was secure for anything that I might endorse.

Int. 28. Did that assurance relate to the sufficiency of Mr. Eaton's property to indemnify you for such endorsements, or the sufficiency of his own individual property?

(Objected to.)

Ans. To the property of Amasa M. Eaton, Mr. Bailey having secured me prior, for endorsements for him, by a mortgage on his own property.

Int. 29. Please state whether or not, if the statements you refer to in regard to Amasa M. Eaton's property had not been made, you would have endorsed Bailey & Eaton's paper?

(Objected to.)

Ans. I should not. Why should I for a stranger without security?

Int. 30. Please state whether or not you endorsed for Bailey & Eaton before you were connected with the Union Coal and Oil Company?

(Objected to.)

Ans. I think so.

Int. 31. Please state whether you have received an assignment from William M. Bailey in trust for the benefit of his creditors? If yea, when, and please append a copy of the same.

(Objected to as to the admissibility of the question, and not to the mode of the proof.)

Ans. I received an assignment on the first day of March, 1867, the day before the bankrupt law went in force, preferring, first, estates that he was executor and administrator on; second, trustee; third, trustee's agent. Paying everybody first before James Y. Smith and Richard J. Arnold, who endorsed a note for $7,000 for an estate for which Dr. Tobey was trustee. I will append a copy, as requested.

Int. 32. Please append a statement of the amount and nature of indebtedness preferred by said assignment prior to yourself.

(Objected to.)

Ans. I will.

96 Int. 33. Please state whether Mr. William M. Bailey has, since the making of his assignment to you, been discharged in bankruptcy; and please state whether you opposed the same.

(Objected to as inadmissible and not as to the form of the proof.)

Ans. I believe he has been discharged, and I did not oppose it. I suggested to Mr. Bailey, before he applied, that he had no occasion to apply on my account, as I was the only person that he owed a dollar to—saying to him that I thought it unwise for a gentleman to pass through that court when there was no necessity for it.

Int. 34. Please state whether you offered to give him any writing to that effect.

(Objected to.)

Ans. I stated to him that I would give him any assurance that he wanted.

Int. 35. Please state whether, a day or two before Mr. Bailey's going into bankruptcy, he filed a bill in equity against you, claiming that you had paid a large amount of accommodation endorsements for him in your own wrong, as having been paid before they were due.

(Objected to.)

Ans. After Mr. Bailey's assignment I had several interviews at his suggestion and Thomas Brown's concerning the disposal of some of the property. Mr. Bailey, at the last interview, for two hours asserted that I had sold his property too low—West Providence Land Company, Scituate Manufacturing Company, and Ashland Company. The three pieces had sold for about $112,000 to $115,000. The discussion was closed in this manner. I said to Mr. Bailey I would induce the party buying that property to sell it back to him for the same amount of money it had been sold for, and also induce him to give up the interest, which at that time must have amounted to $6,000 or $7,000. I also, in furtherance of my cleverness, offered to give Mr. William M. Bailey my check for $25,000, to help purchase the property back—an outright gift. Being a brother-in-law, of course induced me to do it. He declined, saying that he had no money to pay for the balance. Of course
97 our conversation necessarily must be terminated then. At that moment Mr. William M. Bailey presented a paper, asking me to read it, and said it was a bill in equity, containing eighty or ninety pages, with all kinds of charges, one of which was setting forth that I had sold those pieces of property too cheap. That bill in equity is the one referred to. I did not know that the charge of paying endorsements in my own wrong were in the bill at that time, but I said to Mr. Bailey if he found it necessary to prosecute such a paper, that the legal gentlemen would be obliged to take care of it, and I left him. Since I have found that it was filled with allegations of all kinds, and the matter of endorsement was referred in connection with all the others.

Adjourned until Saturday at 9 o'clock.

Int. 36. You have mentioned Thomas Brown and Richard J. Arnold in your deposition. Please state how they were related to you, or connected with you or Mr. Bailey, or either of you.

Ans. Mr. Bailey's wife and my wife are sisters, and sisters of Thomas Brown. Mr. Richard J. Arnold was a particular business partner and friend of Mr. Bailey's.

Int. 37. When you say business partner, please explain exactly what you mean, whether he was a regular partner of Mr. Bailey's or simply associated with him in various business enterprises.

Ans. I should say associated with him in various business enterprises; some of large amount.

Cross-examination.

The defendants, not waiving their objections to the preceding examination, submit the following cross-interrogatories:

Int. 1. In your answer to the 4th direct interrogatory you say it was by request of William M. Bailey, for Bailey & Eaton, under his name, after the decease of Mr. Eaton's mother, that you commenced the endorsement of Bailey & Eaton's paper, he assuring you there was ample
98 property to secure you, as Mr. Eaton was to have one-fourth of his mother's estate; that he afterwards shew' you a list of property of Mrs. Eaton's estate, showing large landed estates of great value, and a long list of stocks, bonds, and securities, &c. Please state particularly when and where such request of Mr. Bailey's took place, when and where such list of property was shown you, and who were or was present at either interview.

Ans. I think at our offices in Westminster street, in Westminster

block, only a single door separating the two rooms, Mr. Bailey many times during the day visiting my office. I do not recollect the date or who was present. I think Mr. Eaton was present at one interview certain. I think very likely at both, as Mr. Bailey was his particular adviser always in matters of that kind. My office was constantly thronged with men upon State business and other business transactions during the war, and Mr. Bailey was one of its frequent visitors, generally appearing many times daily for endorsements and many other business favors. I cannot fix definitely the time that elapsed between the two interviews concerning the property.

Int. 2. Please state the particular purpose of the list of Mrs. Eaton's property mentioned in your answer to said 4th interrogatory, and as nearly as you can the time when first shown you.

Ans. I don't know the particular purpose. Mr. Bailey, pointing to some of the stocks, spoke of their market value, above their par value, some of them as about $140, when their par value was $100, giving me to understand that the estate was of larger value than when first talked about. The date or time I do not recollect.

Int. 3. Please state to what time or times you refer when you say first talked about.

Ans. When he showed me the list of properties.

Int. 4. Please state if you were not one of the official appraisers appointed to return an inventory of Mrs. Eaton's property, and did not accept such appointment and render such inventory, and if Amasa M. Eaton did not furnish you with a list of property for such inventory.

99 Ans. I do not recollect that I ever signed an inventory of Mrs. Eaton's property. I may have done so. I don't know it if I did. I doubt if Mr. Eaton ever presented to me any paper of the kind.

(Any inquiry as to a paper or the signature of a witness to a paper objected to by plaintiff's counsel, without first producing the paper itself and showing it to the witness.)

Int. 5. Please state whether or not you are clear and positive in your recollection that such list of Mrs. Eaton's property was shown you more than once, or by more than one person.

Ans. I think it very likely that Mr. Eaton may have been present once when Mr. Bailey was showing the list of property to me, and when it was talked about. I cannot definitely fix the time or place. I think it was in Mr. Bailey's office, at a large flat table he used to have for a writing desk.

Int. 6. Please state whether you have any record by which you can fix the time of your first endorsement under Mr. Bailey's name for Bailey & Eaton; or, if not, whether you can fix such time from memory.

Ans. I have every note endorsed for William M. Bailey put down in a book now at my office. The understanding with Mr. Bailey was (witness' answer objected to by defendant's counsel on the ground that he is putting in matter not responsive to the interrogatory) that all endorsements made for Bailey & Eaton was to be under his name, and that he would keep a record of it; therefore did not keep every record of date of endorsements. I cannot fix it from memory.

Int. 7. Please state whether you were not interested in the application of the money produced from the discount of a note of Bailey & Eaton for $12,500, dated August 15, 1864, or thereabouts, endorsed by you, and were not the proceeds of the discount of said note applied to the payment of the Burges Point land, purchased of William M. Bailey, executor, as stated in your direct examination.

Ans. I do not recollect. I think it very probable, as Mr. Bailey frequently joined in arrangements to raise money where he was and where he was not interested in paying for the property.

100 Int. 8. State whether this Burges Point purchase did not form the real estate of the East Providence Land Company, in which you were a part owner, as mentioned in your direct examination.

Ans. I think it did, and the note, if endorsed as prior stated, was reimbursed by the payment of $3,750 each by William M. Bailey, Richard J. Arnold, Bailey & Eaton, and James Y. Smith. The amount for the payment of Mr. Bailey's quarter and mine was by his note endorsed by me for $7,500, afterwards paid one-half by myself and the other half by Mr. Bailey in some capacity. Of this I have a distinct recollection from the size of the note, Mr. Bailey considering the note of Bailey & Eaton the most indirect way of buying him into the concern.

(The counsel for the defendants objects to so much of the preceding answer as is not responsive to the interrogatory.)

Int. 9. In your direct testimony you mention William M. Bailey as advising the joint purchase of Burgess Point, whilst you and he were riding down to the purchase of the auction sale. Please state if, at the premises, at the time of sale, you did not confer with Amasa M. Eaton, as to bidding in that property for the joint interest afterwards formed, and whether he did not bid it in at a price then approved and directed by you for said joint interest.

Ans. I think not. I think I made no direction in the matter, but joined in the purchase as it proved afterwards.

Int. 10. In answer to 11th direct interrogatory as to how you got into your relations with Bailey & Eaton in the Union Coal and Oil Company, you say you were invited by William M. Bailey to dine at his house with some gentlemen when the matter was first introduced. Please state whether or not previously to this time you did not have a party of the same gentlemen, or some of them to dine at your house, when the subject of the purchase of the Union Coal and Oil Company property was considered and discussed, and the subject of forming a party to visit Maysville, where said property was, for the purpose of ascertaining its value, &c.; if yea, please state who these gentlemen were, and, as nearly as you can, the time when such party your house was.

101 Ans. Mr. Bailey did ask me to invite some Kentucky gentlemen at my house to dine, as I was frequently invited by others, being in a public office. Whether the subject was discussed there, Mr. Bailey and the Kentucky gentlemen better know. I did not allow, on such occasions, special business interests to be entertained at the table. I do not recollect the names of the gentlemen. I think Mr. Barber was one, cashier of a bank out there, and treasurer of the company. I had been importuned in this matter by Bailey & Eaton after the first interview, about taking hold of the property; being pressed with a multitude of cares for the State and others, I was very likely to say yes or no about such new projects, many being presented daily by the above parties and others to take interests. I do not recollect the time, of course, when these gentlemen were at my house to dine. I will now state in addition that the demands from the Government of the United States and the people on an executive officer was nearly constant, day and night. Therefore it would be impossible, without keeping a record of things transpiring, to clearly recollect any distinct date or such an occasion.

Int. 11. Please look at this letter now shown to you, and say whether or not the dinner party at your house was prior or subsequent to your

writing that letter, and please annex a copy of this letter to this deposition if it be genuine.

Ans. I cannot state whether it was prior or after. But I will state that the information given by these several parties, Bailey & Eaton, Mr. Finch, and Mr. Mason, was improperly stated, and simply a ruse to throw the property on to other people's shoulders to carry, as they afterwards proved to be the owners of a large amount of stock for which they paid nothing, and this determined me not to have anything to do with the property. When William C. Chapin asked me to take in the property a large sum, feeling that a responsible man had taken hold of it, although I demurred at a $100,000, took $25,000.

(Counsel for the defendants, on hearing read the answer to the last preceding interrogatory, objects to so much thereof as is not responsive to said interrogatory.)

102 Int. 12. In your answer to the last interrogatory you refer to William C. Chapin as asking you to take a large sum in said property. Please state the time when said Chapin made such request, and annex hereto any letter or telegram, or copy thereof, which you may have received from Mr. Chapin upon said subject.

Ans. The request came through Bailey & Eaton or William M. Bailey. I therefore have no papers.

Int. 13. Please state whether the letter now shown you, dated November 8th, 1864, purporting to be in your handwriting and signed by you, is genuine; and if so, will you please annex a copy hereto?

Ans. It is genuine, and this, as well as all the other matters, were referred to William M. Bailey and Bailey & Eaton to press on to me by solicitation and other ways. I have no objection to annexing a copy.

Int. 14. Please state whether the gentlemen whose names you have given as stockholders with yourself and Bailey & Eaton, in said Union Coal and Oil Company, are not business men of high credit and great responsibility.

Ans. William C. Chapin, Rowse Babcock, Joseph Lee, I have great confidence in as business men. Bailey & Eaton were very inexperienced, being young, and entirely directed by William M. Bailey. Amasa Mason and Marcus Finch were introduced by William M. Bailey to me. I know nothing of their business qualities. The Kentucky gentlemen were also introduced by William M. Bailey, and I presume are good business men. The others, their names I do not recollect, and of course cannot speak of them.

(The counsel for the defendants objects to so much of the deponent's answer to the last preceding interrogatory as is irresponsive thereto.)

Int. 15. Please state whether or not you were a director in said Union Coal and Oil Company, and whether you were not present in William M. Bailey's office with the Kentucky gentlemen, or some of them named by you, when said Union Coal and Oil Company property was agreed to be purchased, or the purchase considered and discussed; and

103 did you not know, at the time, that Bailey & Eaton were to have 500 shares, that is, $50,000, in the stock of said company for negotiating the purchase of said property? Did you not know that they divided said 500 shares with William C. Chapin for his like services, and also did you not know that said Bailey & Eaton purchased other 500 shares in said company?

Ans. I was a nominal director, to make up the list, called when it was necessary to make a quorum in William M. Bailey's office, and after staying long enough to form a quorum was frequently called out, not to return during that meeting, to attend to duties in my executive capacity,

therefore did not know the conclusions of the board. Did hear that Bailey & Eaton wanted a large number of shares for their services. Did not know until late, or until Mr. Chapin demanded that they should give up a part of their stock, that they had so many shares awarded them. Did not know that they bought 500 shares. By reference to the books it is now supposed they hold near 1,700 shares. I do not know how they obtained them. Bailey & Eaton, Amasa Mason, and Marcus Finch, while he remained a stockholder, and William M. Bailey, were constantly manipulating this concern until the sale was finished, for they were the parties that seemed to be handling it here.

Int. 16. Please state whether or not several of the notes of Bailey & Eaton, endorsed by you after the endorsement by William M. Baily, were not notes made to raise money to pay for their stock, more or less, in said Union Coal and Oil Company.

Ans. No special notes for that purpose to my knowledge. But all the endorsements were of one character. I knew no particular thing that they were to be applied to. Bailey & Eaton would make the note. William M. Bailey would endorse it, and then it would be presented for my endorsement.

Int. 17. Please state whether or not you did not know at the time that a considerable portion of Bailey & Eaton's paper, endorsed by William M. Bailey and yourself, was paper made by them for the accommodation of the business of said Union Coal and Oil Company, in which you were interested as stockholder and director, and for the time that Mr. Chapin was in Europe acting president, as stated in your direct examination.

104 Ans. I did know that Bailey & Eaton received a large amount of the products of this company; that they did make advances to the Union Coal and Oil Company on account of the same, receiving ten per cent. commission and other charges as a remuneration for doing the business; and presume the notes or the proceeds of the same were used in this as in other business transactions.

Int. 18. Please state whether or not you did not have representations from other parties than Bailey & Eaton as to the character and value of the Union Coal and Oil Company property, prior to your joining in the purchase or taking stock in the enterprise.

Ans. I don't bring to mind any other parties that were talking about the purchase, so clearly as they. Very probably I heard others make remarks of its value. Probably Mr. Mason and Mr. Finch had something to say concerning the value. Mr. William C. Chapin spoke highly of the property after he purchased it.

Direct examination resumed:

Int. 1. Please state how many times, according to the best of your recollection, the list of the Eaton property was shown to you.

Ans. I should say two or three or four times.

Int. 2. You were asked to state the special purpose with which it was shown. I ask you to state what was said and done at the time it was thus shown.

Ans. I cannot state the exact language. My idea and acceptation was that it was to prove to me my perfect security to endorse for these parties, Bailey & Eaton.

Int. 3. What was said in that regard by Mr. Bailey? State in substance as near as you can.

Ans. The language it is difficult to state. But the object, as accepted by me, was to show the property ample to secure me in the endorse-

ments that had previously been talked about and referred to. I know no other object.

105 Int. 4. Did you or not in connection with such exhibit of the items of property, converse upon the subject of these endorsements?

Ans. I have no doubt that they were talked about at all of these exhibits. There could be no other object, as they were not attempting to sell me any of the property. It must have been to show me that I was secure in making the endorsements for Bailey & Eaton.

Int. 5. Were these exhibits to you made at other times and for other purposes than that of making an appraisal of the property, provided you did make any formal or official return of such appraisal of the Eaton estate?

Ans. They certainly were at other times, and beyond a doubt for other purposes.

Int. 6. You have stated that you were engaged in certain executive and official business. Please state what office you held, and during what time.

Ans. I was governor of the State of Rhode Island for the years 1863, 1864, and 1865.

Int. 7. In the note which has been produced in the cross-examination, dated November 8, 1864, signed by you, you say that you feel that 500 shares out of what appears to be 13,000 shares should be awarded to Messrs. Bailey & Eaton and Mr. Mason. What amount was received by Mr. Mason?

Ans. I never knew how much Mr. Mason received. They worked together in charging the stock on to other people.

Int. 8. How many shares did it turn out that Messrs. Bailey & Eaton had, and how many did they give up to Mr. Chapin?

Ans. I think the books show Bailey & Eaton held 1,865. I never knew how many they gave to Mr. Chapin upon his demand.

Int. 9. After writing this note did you change your views as to the conduct of the parties, Messrs. Bailey & Eaton and Mr. Mason, and others, in presenting this stock for sale?

Ans. I must have done so, from the fact that I only would take the $25,000.

Int. 10. When you took the $25,000, did you take it in conjunction with other parties who were to take the same amount; if so, what parties?

106 Ans. I did. Joseph Lee, William M. Bailey, and myself, each $25,000.

Int. 11. What business relation did Mr. Lee sustain to you and to Mr. Bailey?

Ans. Mr. Lee was of the company of the same name to whom we consigned goods for sale, and had been for a quarter of a century. I do not know of any business relation in connection with Mr. Bailey. He might have consigned goods to him; probably did. I now recollect that he did consign goods for the Union Twine Company, and was an owner in the same, one-third interest.

Int. 12. When you finally decided to take the lesser interest in this company, $25,000 instead of $50,000, did you know that Messrs. Bailey & Eaton were to have any large amount of stock, such as it afterwards proved that they had?

Ans. I did not know that they were to have the large amount which they proved to have.

Cross-examination resumed:

Int. 1. In your answer to the 9th redirect interrogatory you say that you must have changed your views as to the conduct of the parties, Bailey & Eaton and Mr. Mason and others, in presenting this stock for sale. Please state the time, or about the time, as near as you can, when you took the $25,000 in said stock, and how long thereafter you continued to endorse the paper of Bailey & Eaton.

Ans. I do not recollect the date. The strongest evidence of my change of views is the facts that have transpired. (Counsel objects to deponent stating matters not responsive to the question.) I continued to endorse the paper of Bailey & Eaton until they failed, or until William M. Bailey failed, when they failed, which was the 1st of March, 1867, the day before the bankrupt law went into effect, being the only opportunity to make me pay as his bondsman as executor, administrator, and trustee for the several estates in which he acted. Had he have waited until the second day of March, he could not have withheld the security from me. I should have been an equal creditor with all others.

107 (The counsel for defendants objects to the whole of the answer to the last preceding interrogatory except the words "I do not recollect the date," and the words, "I continued to endorse the paper of Bailey & Eaton until they failed, which was the 1st of March, 1867," as not responsive to said interrogatory.)

JAMES Y. SMITH.

Exhibit in answer to cross-interrogatory 13.

PROVIDENCE, *Nov. 8th*, 1864.—*Evening.*

W'M M. BAILEY, Esq.:

MY DEAR SIR: Presuming that I may not be able to accompany you to Maysville and Cannelton, I feel it due that I should express my views concerning the purchase of the Maysville Coal and Oil Company. From the information derived from Messrs. Bailey & Eaton and Mr. Mason, and the gentlemen from Kentucky, Messrs. Coons, Barber, and Matthews, and Mr. Finch of New York, I am desirous to take fifty thousand dollars ($50,000) of the $450,000 which the property can be purchased for, including (7,500) shares of the capital stock, being $\frac{3}{4}$ of the now issued stock, (leaving 2,500 shares to the old stockholders,) giving 500 shares to each $50,000 of the amount taken. And of the remaining 3,000 shares I feel 500 should be awarded Messrs. Bailey & Eaton and Mr. Mason, without pay, in consideration for their presenting the property, and being the only medium through which the same could be obtained. I would take a larger amount were my capital not already invested in property not easily changed.

Most truly,

JAMES Y. SMITH.

Exhibit in answer to interrogatory 31.

Know all men that I, William M. Bailey, of North Providence, in the county of Providence, State of Rhode Island, in consideration of one dollar to me paid by James Y. Smith, of the city and county of Providence, in said State, and of the trusts hereinafter created and by

108 him to be performed, do hereby grant, bargain, sell, assign, transfer, convey, and confirm unto the said James Y. Smith, his heirs, executors, administrators, and successors, in the trust hereby created, all the estates and property, and all my right, title, and interest in and to all the following-described estate and property, together with all

buildings and improvements of every kind thereon, and all the privileges and appurtenances of all the same, namely:

All the following-described estate situate in North Providence:

A lot of land on north side of Valley street, near Richmond Print-Works, measuring about one hundred and ten feet on Valley street and one hundred to the rear, with two dwelling-houses thereon, and known as the Hamilton House, conveyed to me by Usher Parsons and West Providence Land Company.

Two lots of land on north side of Atwell's avenue, number 346 and 381, on plat of Rutenberg House lots, belonging to heirs of Samuel Ward and to Richard Waterman, made by Cushing and Farnum, 1853, conveyed to me by deed from John and Margaret Cook, February 25, 1867.

One undivided half part of a certain piece of land or thatch right, conveyed to me by deed from Amos D. Smith, dated April 28th, 1854, and situated on north side of Woonasquatucket River.

One lot of land situated on north side of the road leading westerly from Eagle Peak, containing about $5\frac{12}{100}$ acres, as shown on plat of division made with Charles S. Bradley by S. B. Cushing, April 18, 1860.

The north half of a lot of land known as the city lot, on the easterly side of a new street laid out over a part of this lot and land of Charles Swan, and bounding northerly on road leading westerly from Eagle Peak, containing about eight acres, originally purchased of the city of Providence by Charles S. Bradley and myself, and divided with him.

The undivided half part of about 25 acres of land situate on northerly side of Chalkstone road, originally conveyed to me by deed from Richard J. Arnold, executor of William E. Greene and Waterman B. Angell, and now owned jointly with Thomas Brown, of the city of Providence.

109 A strip of land lying between the Douglas and old road, and opposite the Catholic cemetery, containing about one acre, and conveyed to me by deed from A. G. Potter, executor, dated February 7, 1863.

Also all the following-described estate and property situate in the city of Providence, in said State of Rhode Island, namely:

Lot No. 13 on What Cheer plat, situate on the north side of Manning street, conveyed to me by deed from Almira F. Dexter, dated June 1, 1866.

One undivided twenty-fifth part of a certain lot of land situate on easterly side of North Main street, on which it measures thirty-five and a half feet, more or less, and known as the Man Lot, conveyed to me by deed from Amasa Mason, 2d, dated October 23, 1843.

Four-fifths ($\frac{4}{5}$) of a lot of land situate on the southerly side of Westminster street, with building thereon, known as the Westminster block; said lot measuring about 40 feet on Westminster street, extending back about 60 feet, and has a gangway on west side.

Four-fifths ($\frac{4}{5}$) of a lot of land situate on the northerly side of Weybosset street, with building thereon, known as Weybosset block, said lot measuring about 42 feet on Weybosset street, and extending back about 60 feet.

One lot on northerly side of High street, 76 feet front by 100 feet deep, under lease to George W. Chapin, purchased by me of Leroy P. and Eliza D. Walker, by deed dated May 9, 1863.

Sixteen hundred (1,600) arpents of an undivided tract of land in Remousky County, Lower Canada, conveyed to me by deeds from Charles S. Bradley and Rollin Matthewson, both dated July 21, 1846.

An undivided one-fifth ($\frac{1}{5}$) interest in Michigan mineral lands in Keweenaw and Houghton Counties, Michigan, including herein and hereby conveying all lands belonging to me in said counties.

Also my right, title, and interest in and to all the real estate and property of the East Providence Land Company, a corporation created by the general assembly of the State of Rhode Island, said real estate lying in East Providence, in said State.

Also all my right, title, and interest in and to the estate and property of the Ferry Coal Yard Company, in said city of Providence.

Also all my right, title, and interest in and to all the estate, water-power, mills, and property of every kind, of the Ashland company, situate in Scituate, Rhode Island, together, also, with all property of said company wheresoever situated.

Also all my right, title, and interest in and to all the estate and property of the West Providence Land Company, said real estate being situate in the city of Providence and the towns of North Providence, Johnston, Cranston, West Greenwich, and Exeter, Rhode Island.

Also all my right, title, and interest in and to all the estate, water-power, mills, and property of every kind of the Scituate Manufacturing Company, situate in Scituate, Rhode Island, together, also, with all property of said company wherever situate.

Also the following-described property:

Twenty (20) shares in the Providence, Pawtucket and Central Falls Railroad.

Thirty-five (35) shares in the American File Company.

One (1) bounty-land warrant, No. 24969, for eighty (80) acres of land.

Twenty (20) shares Narragansett Fire and Marine Insurance Company.

Two (2) shares Providence Washington Insurance Company.

Thirty-seven and one-half ($37\frac{1}{2}$) shares in the East Providence Land Company.

Twenty (20) shares in the City Insurance Company.

One-eighth ($\frac{1}{8}$) of capital stock in Ferry Coal-Yard Company.

Ninety (90) shares in Ashland Company.

Nine (9) shares Rhode Island National Bank, Providence.

Eighty-nine (89) shares in the Equitable Fire and Marine Insurance, Company, Providence.

Two hundred (200) shares in the West Providence Land Company.

Sixteen (16) shares Providence, Hartford and Fishkill Railroad Company.

Twelve hundred and twenty-five (1225) shares Union Coal and Oil Company of Maysville, Kentucky, standing in name of William M. Bailey and James Y. Smith, owned jointly.

One hundred (100) shares American Wood Paper Company.

Two (2) bonds, $1,000 each, of the Providence, Pawtucket and Central Falls Railroad Company.

Two hundred (200) shares Rhode Island Mining Company.

Seventy-five (75) shares Rubber Sole Shoe Company, Stoneham, Massachusetts.

Fifty-four (54) shares Fall River, Warren and Providence Railroad.

Two hundred and forty (240) shares Providence Press Company.

One hundred and fifty (150) shares Ascot Mining Company.

Five (5) shares Thurber Mining Company.

Four (4) bonds United States and Paraguay Navigation Company.

Ten (10) shares Providence, Warren and Bristol Railroad Company.

Five hundred (500) shares Torch Lake Mining Company.

Interest in the King Gold Mining Company.
Five hundred (500) shares New York and Providence Petroleum Company.
One (1) share in Providence Athenæum.
Fourteen (14) shares Scituate Manufacturing Company.
One-sixteenth ($\frac{1}{16}$) interest in Steiner Petroleum Well.
Stock in Pithole Petroleum Company.
One-fourth ($\frac{1}{4}$) interest in Union Flax Company.
One-fourth ($\frac{1}{4}$) interest in Union Twine Company.
Interest in Providence Petroleum Company.
One (1) right in Providence Aqueduct Company.
One (1) pew, No. , in Grace Church.
One (1) pew, No. , in St. Stephen's Church.
Thirty (30) shares Old National Bank, Providence.
Ten (10) shares Butchers' and Drovers' Bank, Providence.
One-sixteenth ($\frac{1}{16}$) interest in schooner "Gov. J. Y. Smith."
112 One thirty-second ($\frac{1}{32}$) interest in schooner "S. P. Hawes."
All my interest in leases of Eels River lands in West Virginia.

Hereby intending to convey, and hereby conveying, all my share in the capital stock of each and all the above-named corporations and companies, whatever the same may be, and also hereby conveying all my right, title, and interest in and to all the real and personal estate and property of each and all said corporations and companies, wherever the said estate and property may be.

Also hereby assigning and conveying all other real and personal estate of any kind and wherever situate, excepting such as is exempt from attachment by law.

To have and to hold all the same, with all the privileges and appurtenances thereof, to him, the said James Y. Smith, his heirs, executors, administrators, and successors in the trust hereinafter declared, always in trust, however, for the uses and purposes following, that is to say, in trust to take possession of all said estate and property, insure and otherwise take care of the same for the interest of those concerned, to sell and dispose of the same at public or private sale in his discretion, to execute all conveyances and other instruments requisite to carry the trust hereby created into full effect, with full power to submit any matter of arbitration, and to make any just compromise, and collect all the proceeds of said assigned estate, and after paying thereout all the cost, charge, and expense of making and executing these trusts and incidental thereto, together with a reasonable compensation to my assignee, for his services as such, then out of the residue—

First. To pay in full all debts due or owing from me for my personal and family and household expenses; all sums owing from me to my clerks, and for labor on my farm and servants; also all sums owing from me for hay and grain bought by me for use at my barns.

Second. After paying all the preceding in full, then out of the residue of proceeds to pay in full, if sufficient, but if not sufficient to pay
113 in full, then ratably and proportionately, irrespective of the order in which they are here written, all the following described debts, namely:

All sums of money in anywise due or owing from me, as trustee for Elizabeth B. Dyer, wife of Benjamin B. Dyer, either to her or to the said estate, of which I am trustee for her, with interest thereon.

All sums of money in anywise due or owing from me to Zephaniah Brown, as trustee for Harriet B. Bailey, my wife, with interest thereon

All sums of money in anywise due or owing from me to George W Keely and Jane Keely, his wife, or either of them, with interest thereo n

All sums of money in anywise due or owing from me to the administrator or to the estate of Charles Potter, deceased, I being administrator on said estate, with interest thereon.

All sums of money in anywise due or owing from me to the executor of the will of Tristam Burges, deceased, or to his said estate, and also all sums due or owing from me to the trust estate created by the said Tristam Burges in his lifetime for the benefit of his family, and of which I am trustee, with interest thereon.

All sums of money due or owing from me to the executor of the will of or to the estate of Jacob W. Bailey, I being said executor, and also all sums due or owing from me to the trust estate created in and by the will of said Jacob W. Bailey for his children and others, I being trustee of the same, with interest thereon.

All sums of money due or owing from me to the trust estate of Samuel B. Mumford, of which I am trustee, also all sums due or owing from me to Mrs. Louisa D. Mumford, widow of said Samuel B. Mumford, with interest thereon.

My intention is to pay in full all sums of money in anywise due or owing from me to any estate where I am executor, administrator, or trustee, so that said estates shall be made good; and I hereby direct my said assignee to pay all such in full if the proceeds of said estate be sufficient, but if not sufficient to pay them in full, then ratably and proportionately, hereby including them in this class of my assignment.

114 Third. After paying all the preceding in full, then out of the residue to pay in full, if sufficient, but if not sufficient to pay in full, then ratably and proportionately, all sums of money due or owing from me for labor done and materials furnished in and about the repairing my real estate, when the entire bills so due or owing to any one person or firm does not exceed the sum of one hundred dollars.

Fourth. After paying all the preceding in full, then out of the residue to pay in full, if sufficient, but if not sufficient to pay in full, then ratably, all sums of money in anywise due or owing from me to James Y. Smith, including herein all sums of money that may become due from me to him or his estate by reason or in consequence of his being required to pay my portion as well as his own of any debt or obligation where we are both liable, and all debts and paper of mine for or upon which said James Y. Smith is liable for me or for my accommodation as endorser, guarantor, or in any other manner, and also to indemnify and hold him harmless in every respect of and from all liabilities of every kind entered into or incurred by him at my request or for me, including every endorsement by James Y. Smith of paper of Bailey & Eaton.

Also to pay a certain note made and given by me and payable to the order of Samuel Boyd Tobey, trustee, for seven thousand dollars, dated on or about the first day of October, A. D. 1861, and endorsed by Richard J. Arnold.

And to pay Joseph Lea & Co. one-third of the amount of any drafts accepted by said Joseph Lea & Co. to which James Y. Smith, William M. Bailey, in his individual capacity, and Joseph Lea & Co. are all parties, and which drafts have not matured. Also one-third of a certain note payable by said Joseph Lea & Co. to William V. Daboll, administrator. Also to pay to said Joseph Lea & Co. one-third of any contingent liability of said Joseph Lea & Co. incurred by reason of drafts drawn by William M. Bailey, treasurer, not matured. Also to pay to said Joseph Lea & Co. one-third of any loss which they may suffer by reason of an advance made by them to the Union Coal and Oil Com-

115 pany of the sum of ten thousand dollars, on or about the twenty-

seventh day of February, A. D. 1867. Also to indemnify and save harmless Henry C. Cranston, of Providence, from any loss or damage he may sustain by reason or in consequence of his paying or having paid any debts growing out of the purchase or repairs or improvement of any real estate situate in Providence, bought or held by him or in his name, for the joint account of himself, James Y. Smith and myself, which as between us three it pertains or belongs to me to pay as my share or portion thereof, with all interest thereon; pr[illegible]d, however, the said real estate is held for our said joint account.

Also, my indebtedness to the Scituate Manu[illegible]ring Company; also, my indebtedness to the Union Twine Company, and one-third of the liabilities of said company; also, one-third of the liabilities of the Union Flax Company.

Fifth. Whereas I hold the legal title to certain mining property in Colorado, derived from John Crook, of North Providence, to which, or portions of which, said Crook has an equitable right, I hereby direct and order my said assignee to convey to said Crook such portions of said mining property as will carry out in good faith the existing understanding between me and said Crook in respect to the same.

After paying all the preceding in full, then to pay the residue of said proceeds ratably to such of my other creditors as shall respectively make, execute, and deliver to my said assignee, on or before the second day of September, A. D. 1867, a release under seal of all their several and respective claims against me.

In witness whereof the parties hereto have respectively set their hands and seals this first day of March, one thousand eight hundred and sixty-seven.

W'M M. BAILEY. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY MARTIN.
W'M P. MORTON.

116 And I, the above-named James Y. Smith, hereby accept of the foregoing assignment, and covenant with him, the said William M. Bailey, his heirs and assigns, that I will faithfully discharge the aforenamed trusts according to the best of my ability.

JAMES Y. SMITH. [L. S.]

[Stamp, two hundred ($200) dollars.]

THE STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
County of Providence, sc.:

Be it known that, in the city of Providence, in the county and State aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Henry Martin, a public notary for said county of Providence, personally appeared William M. Bailey, to me personally known to be the individual described in and who executed the foregoing instrument; and he acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said Providence, the day and year above written.

[SEAL.] HENRY MARTIN,
Public Notary.

Exhibit in answer to interrogatory 32.

Statement of the amount and nature of indebtedness preferred by William M. Bailey's assignment prior to James Y. Smith. Answer to interrogatory 32 to James Y. Smith.

Estate of Elizabeth B. Dyer, wife of Benjamin B. Dyer, to her or for William M. Bailey, trustee:

As due estate	$5,908 29	
Interest	30 18	
		$5,938 47
As due income	$467 85	
Interest	7 57	
		475 42
		$6,413 89

117 Zephaniah Brown, trustee for Harriet B. Bailey, wife of William M. Bailey:

As due estate	$4,334 67	
Interest	43 34	
		$4,378 01

George W. Keely, and Jane Keely, mother of William M. Bailey:

As due them	$261 96	
Interest	1 53	
		$263 49

Estate of Charles Potter, William M. Bailey, administrator. $5,820 52

Paid estate of Jacob W. Bailey, William M. Bailey, executor:

As due estate	$2,363 67	
Interest	15 33	
		$2,379 00

Estate of Samuel B. Mumford, William M. Bailey, trustee:

As due estate	$4,850 51	
Interest	30 31	
		$4,880 82

Paid for personal, family, and household expenses, labor on farm, servants, and for hay and grain for William M. Bailey $770 60

Claimed by William M. Bailey, as due his wife's trustee, Zephaniah Brown, but denied by said Smith, the same being in litigation:

As due income	$8,780 25	
Interest	87 80	
		$8,868 05

118 *Deposition of Charles A. Nichols.*

CHARLES A. NICHOLS, having been duly sworn according to law, testifies and says as follows, in answer to interrogatories propounded by Horatio Rogers, j'r, and C. S. Bradley, of counsel for complainant:

Int. 1. Please state your age, residence, and occupation.

Ans. My age is 45; residence, Providence; occupation, manufacturer and merchant.

Int. 2. Were you the assignee of Amasa M. Eaton, under his assignment of the 1st of March, 1867, of which a copy, marked Exhibit B, is annexed to the bill in this case?

Ans. I was the assignee of Amasa M. Eaton in the assignment of that date, of which Exhibit B appears to be a copy.

Int. 3. Did any creditors of said assignor, or of the firm of Bailey & Eaton, execute a release so as to entitle them to any of the proceeds of said assigned estate?

Ans. They did not.

Int. 4. Were the claims named in the first class in said assignment—being those upon which William M. Bailey was liable—provided for and paid?

Ans. I paid them.

Int. 5. Please state how they were paid.

Ans. They were paid by the proceeds of the sale of bank-stock, oil-stock, leases or bonds, and, I think, a policy of life-insurance, which I sold for sufficient to pay the claims which were provided for, together with the expenses of the assignment, except my own expenses, which were never paid.

Int. 6. Did you charge anything for your services as assignee?

Ans. I did not.

Int. 7. After the payment of the claims of which you have spoken, were there any other charges (your own services being given up) or claims upon said property in your hands, as assignee, to your knowledge?

Ans. As no releases were presented under clause second, the
119 trust was discharged for which I held the property, after the payment of the notes endorsed by William M. Bailey, specified in the first clause, and the expenses incurred, by which I mean counsel-fees, execution of the assignment, etc.

Int. 8. What statement was made to you, if any, by the assignor in regard to the claims described under the second class in the assignment?

Ans. That he proposed to settle those after he had paid his private obligations.

Int. 9. To what claims did that statement apply?

Ans. To the claims against Bailey & Eaton, or his joint liabilities, as I understood.

Int. 10. What was done as to any possession or control over or interest in the assigned property after the payment of the claims enumerated in the first class, and the disbursements connected with the trust?

Ans. I do not know. I had nothing to do with the property after I had executed the trust.

Int. 11. Were you also the assignee of Bailey & Eaton, under an assignment of the same date, marked Exhibit C?

Ans. I was, of which Exhibit C, annexed to the printed bill in this case, appears to be a copy.

Int. 12. What were the amount of proceeds of said assignment last mentioned?

Ans. The amount of proceeds was between $60,000 or $70,000, subject to expenses.

Int. 13. What was the indebtedness of the Union Coal and Oil Com-

pany to the said Bailey & Eaton, as ascertained upon settling the accounts between them?

Ans. I think it was about $40,000, inclusive of an acceptance for $10,000 given by Bailey & Eaton, which the oil company had used, but which was never paid by either party, so far as I am aware.

Cross-examination:

Int. 1. Will you produce an account of all the property disposed of by you or received by you as assignee of Bailey & Eaton, and how
120 the proceeds of such sales and such receipts have been applied? Please state it particularly and in detail; the accounts produced from each sale.

Ans. I should find it very difficult to do so, for Bailey & Eaton have had all the books, or nearly all. They were my agents in disposing of the property, and both for a long time under a salary in that capacity. I have found it extremely difficult to get all the books that I wanted of them for my own information.

Int. 2. Will you produce such statement as you may be able to do, from the books and papers that you have?

Ans. I will, subject to any legal objections.

(The plaintiff's counsel objects to preceding interrogatory as having no relevancy to this case.)

Direct examination resumed:

Int. 1. Are you quite willing to make such statement and exhibit in full, provided said assignors and agents of said assignee will place in your hands the books and papers that belong to you as such assignee?

Ans. I am perfectly willing to make the fullest possible statement in regard to the assets of Bailey & Eaton. The only difficulty that occurs to me is that I must get particulars from the present defendant, Amasa M. Eaton, in this action, and his late partner, William M. Bailey, j'r, who, as my agents, immediately upon the execution of the assignment, and for a long time thereafter, conducted the details of the business, which consisted in the manufacture of mixed oils, and also the purchase of oils and sales through the ordinary channels in which they had conducted their business in Boston, Providence, New York, and Philadelphia, in all of which cities they had places of business, neither of which were under my direct supervision.

Int. 2. Have you ever before been called upon for such a detailed account as is now asked for in the 1st cross-question?

Ans. I never have, for the reason that all the moneys that came into my hands from these various places of business were delivered to me by the book-keeper of Bailey & Eaton, who has rendered me accounts of the moneys so delivered to me without giving any particulars of the sources whence it was received in many instances.

121 Cross-examination resumed:

Int. 1. Will you forthwith apply to Bailey & Eaton for such books and papers in their hands, or which you suppose to be in their hands, as you require to enable you to make up the account required of or from you by the 1st cross-interrogatory?

Ans. I will. I do now require of Mr. Eaton, who is here present, to furnish the information.

CHAS. A. NICHOLS.

Exhibit of C. A. Nichols' deposition referred to in cross-interrogatory No. 2.

Charles A. Nichols, assignee, in account with Bailey & Eaton, Dr.

1867.	March	6	$1,329 57
		8	2,727 52
		11	363 55
		11	60 00
		13	217 00
		14	481 41
		15	117 15
		16	507 34
		16	400 00
		20	85 20
		20	524 34
		21	2 30
		23	1,471 34
		25	207 06
		30	515 07
	April	1	1,643 33
		2	1,009 85
		5	1,039 59
		5	100 00
		10	118 70
		12	694 10
		13	465 10
		16	349 35
		18	309 36
		19	1,732 35
		20	362 80
		24	249 65
		25	327 06
		25	116 09
		26	125 58
		27	66 00
		29	300 00
		29	658 76
		29	275 00
		30	238 55
	May	1	435 55
		3	438 21
		6	186 43
		6	205 00
		8	1,079 71
		13	352 40
		13	64 63
		13	750 00
		14	150 00
		14	536 24
		15	2,502 52
		16	737 75
		17	516 95
		20	205 48
		22	1,184 90
		23	349 80
		27	352 35

		28	240 68
		29	295 80
	June	1	874 56
		1	507 33
		3	770 52
		4	624 65
		7	1,647 84
		11	286 38
		11	137 00
123	June	11	1,423 00
		17	272 70
		19	268 69
		22	579 27
		25	189 10
		27	746 61
	July	8	383 31
		10	258 25
		13	1,881 15
		16	357 93
		18	2,116 72
		24	287 83
		25	472 52
		26	127 80
		29	143 25
		29	260 00
		31	331 00
	August	2	246 04
		5	344 48
		6	261 43
		7	701 58
		9	34 10
		13	109 20
		14	399 92
		15	756 72
		16	1,519 65
		19	466 90
		20	853 82
		21	477 23
		22	508 83
		27	220 03
	Sept.	2	92 43
		4	181 80
		7	260 86
		10	722 50
		11	286 93
		10	127 65
		13	539 42
124	Sept.	14	582 50
		18	602 10
		20	223 90
		25	624 61
		27	900 00
		27	54 90
	October	3	335 40

		5	665 00
		7	649 98
		9	108 72
		11	551 63
		14	370 05
		18	1,438 81
		19	595 40
		24	712 26
		26	469 96
	Nov.	2	564 28
		5	670 44
		7	188 60
		9	571 62
		16	345 63
		30	393 05
		22	373 97
		30	39 19
	Dec.	2	305 32
		6	639 84
		9	566 44
		10	11,000 00
		11	685 58
		18	196 07
		23	126 76
		26	189 89
		27	357 38
		28	303 26
		30	1 80
		31	13 83
1868	Jan.	1	26 25
		6	109 50
125		8	142 24
		10	96 20
		16	16 30
		18	30 40
		27	59 45
	Feb.	1	93 15
		4	108 60
		6	23 00
		25	50 40
	April	30	101 74
	May	5	62 25
	June	12	35 00
		12	145 60
		12	6 00
	Nov.	2	85 30
		2	102 55
			$81,565 50

Cr.

1867.			
March	6.	By Boston & Providence Railroad, freight	$274 73
	12.	" Stamp on assignment	100 00
	17.	" Hammond & Parkhurst, insurance	210 00
	16.	" Merchants' Union Express installment	150 00

	20.	" Freight on 100 barrels oil	418	20
April	2.	" Rent Boston store	625	00
	2.	" Rent of Providence store	169	00
	2.	" W. M. Bailey, jr., services as agent	100	00
	2.	" A. M. Eaton, services as agent	100	00
	9.	" W. A. Robinson & Co., oil to mix	479	60
	13.	" Teamer's bill	184	62
May	1.	" W. A. Robinson & Co., oil to mix	902	50
	2.	" A. M. Eaton, services as agent	100	00
	7.	" W. A. Robinson & Co., oil to mix	912	40
	8.	" Commission on sale of interest in schooner J. Y. Smith	77	00
	15.	" Bailey & Eaton's expenses in store	50	00
126 May	6.	" By Merchants' Union Express installment	$100	00
	23.	" W. M. Bailey, services as agent	100	00
June	1.	" A. M. Eaton, services as clerk	100	00
	3.	" Store expenses, Bailey & Eaton	75	00
	8.	" W. A. Robinson & Co.'s bill for oil	834	92
	16.	" W. H. Parkhurst, insurance	161	88
	22.	" W. A. Robinson & Co.'s bill for oil	840	73
	25.	" Merchants' Union Express installment	250	00
July	2.	" Rent Boston store, W. M. Bailey, jr	425	00
	6.	" W. M. Bailey, jr., services	100	00
	8.	" W. A. Robinson & Co.'s bill for oil	832	05
	9.	" Rent Providence store	169	00
	19.	" W. M. Bailey, jr., services	100	00
	31.	" W. M. Bailey, jr., expenses	100	00
	31.	" Boon, Rice & Co., oil	105	35
August	7.	" W. A. Robinson & Co., oil	773	40
	13.	" W. H. Potter, legal services	150	00
	26.	" W A. Robinson & Co., oil	802	45
Sept.	1.	" W. M. Bailey, jr., services	100	00
	1.	" G. F. Godfrey, services	100	00
	11.	" Office expenses, Bailey & Eaton	100	00
	13.	" Advertising	10	37
	14.	" W. A. Robinson & Co., oil	819	95
	27.	" Printing and advertising	9	25
	27.	" Ferry Coal-Yard Co., storage	226	25
Oct.	12.	" W. A. Robinson & Co., oil	812	80
	7.	" Barrel Downer oil	24	30
	7.	" W. M. Bailey, jr., services	200	00
	14.	" W. A. Robinson & Co., oil	841	61
Nov.	5.	" W. A. Robinson & Co., oil	840	51
Dec.	3.	" Rent Boston store	274	45
	7.	" Rent of cellar	42	88
	9.	" George Whiting, services	98	00
	9.	" W. M. Bailey, jr., services	100	00
	14.	" Ferry Coal-Yard Co., rent	25	00
1868.				
Jan.	6.	" F. A. Pierce, services as book-keeper	125	00
	8.	" F. A. Pierce in full	120	00
127 May	9.	By interst in Michigan lands	$83	93
1869.				
May	27.	By interest in Michigan lands	84	04
1870.				

April 8.	"	interest in Michigan lands.....	84 00
1871.			
May 22.	"	interest in Michigan lands.....	98 15
			$16,093 32

Of the foregoing amounts charged to me as assignee, I cannot give particulars, because, as before explained, they consist of checks or money paid over to me by Bailey & Eaton, with a very few items of proceeds of collection by lawyers. The account of debits and credits to me is a copy from their books, kept in the office by their book-keeper. I can find only six items on the debit side which I can identify as transactions made by me personally; as to all of those, I think that I made the negotiations which resulted in the sale and conveyance.

They are as follows:

An interest in Torch Lake Mining Lands, Michigan, sold, I think, to a Michigan man, of whose name I have no record, March 25, 1867, for $275.00.

An interest in schooner S. P. Hawes, sold to Henry W. Jackson, April 27, 1867, for $137.00.

Thirty-seven and one-half shares in the East Providence Land Company, sold April 27, 1867, to T. J. Hill, for $750.00.

One-sixteenth interest in schooner J. Y. Smith, sold May 9, 1867, for $1,500.00, to Shubael H. Cady

Merchants' Union Express stock, sold July 13, 1867, for $862.50. I have no record of the names of the purchasers; it was sold through a broker in New York, I think.

All the stock of oils, candles, &c., remaining on hand December 10, 1867, I sold to William M. Bailey, jr., at that time, for $11,000.00.

The net proceeds have been subject to the compensation of the assignee, paid over to James Y. Smith, to indemnify him and William M. Bailey against the notes of Bailey & Eaton, endorsed by them and taken up by James Y. Smith.

128 *Deposition of Dr. Isaac Ray.*

MARCH 22, 1872.

Present, Horatio Rogers, for complainant; Samuel Currey, for respondent.

ISAAC RAY, being duly sworn, deposes and says, in answer to written interrogatories propounded by the complainant:

Int. 1. What is your age and residence?

Ans. My name is Isaac Ray. I am 65 years of age. I reside in Philadelphia, Penn.

Int. 2. What business were you educated for, and what is your present employment? If you have at any time been connected with hospitals for the insane, please state what hospitals, for how long a time with each, in what capacity, and how many insane persons on an average you had under your charge at each hospital. And state whether you have given the subject of insanity and the jurisprudence of it special attention.

Ans. I was educated to be a physician, and that is my present employment. I was superintendent of the hospital for the insane at Augusta, Maine, for 4 years. The average of insane persons there was about 75. I was also superintendent of the Butler Hospital for the Insane at Providence, R. I., for 20 years. The average of insane patients there

was 125 or 130. I had charge of the McLean Asylum at Somerville, Mass., in the summer of 1871. The average there was 180. I have given to insanity and the jurisprudence thereof special attention, and am the author of Ray's Medical Jurisprudence.

Int. 3. Do you know George B. Ruggles personally, and has he been at any time under your care; if yea, please state when and where, and if more than once, state the times particularly, and how long he was under your care each time.

Ans. I do know George B. Ruggles personally; he was at two different times in the Butler Hospital under my care. The first time was in the summer of 1850, when he stayed three months. The second time was in 1860, when he stayed from May to October. I also saw him occasionally between those two periods, but without speaking to him.

129 Int. 4. If you say that he has been under your care at Butler Hospital, and more than once, please state who placed him there the first time, and the circumstances relating to his mental condition, connected with his being so placed.

Ans. He was placed there the first time by his mother; that is, she applied for his admission, and signed the necessary papers. Touching the circumstances of his mental condition, I was told by her that for some days he was getting quite unsteady; that he spoke of seeing strange things, such as stars and visions; that he neglected his studies, being then in college; roamed about; spurned all restraint; and that she was afraid to have him at large any longer, lest some harm might happen to him.

Int. 5. If you say that he has been under your care at Butler Hospital more than once, please state what was his mental condition the first time he was there; state particularly.

Ans. During the first week or two of his first attack he was entirely bereft of his reason; that is, he could not reason connectedly about anything. His mind was entirely withdrawn from everything around him, and dwelling on scenes of the past and objects of the imagination. After a week or two his mind began to clear up, and discerned persons and things in their proper relations.

Int. 6. If you say that he has been under your care at Butler Hospital, please state when he left there the first time, (if more than once,) who took him away, how he came to leave, and whether he was in a sane state of mind, in your opinion, at the time he left; state particularly the circumstances attending his leaving.

Ans. I don't remember precisely when he left the first time. He was removed by his mother. I thought it a premature removal, because I did not regard him as fully recovered. He had not regained his proper healthy condition of mind. I urged Mrs. Eaton to let him stay longer, for although he might be able for a time to take care of himself, there was more danger of a relapse than if he began the world again in a sound state of mind. But he pleaded hard to be removed, and she yielded.

Int. 7. If you state that he has been in Butler Hospital under
130 your care, please state when you next saw him after his leaving the hospital the first time, if there more than once; where and how he then appeared as regards his mental condition; state particularly.

Ans. I don't remember that I ever spoke to him in the interval between his two admissions, unless, perhaps, to exchange the usual salutations as I passed him in the street. In the summer of 1859 I attended an auction sale of cows at a place near his mother's, and observed

George B. Ruggles on the ground. He displayed the same haughty, defiant manner which characterized his first attack, the greater part of the time. In the course of the sale he took umbrage at something said by one of the bystanders, and addressed to him some violent and insulting language in a tone so loud as to attract the attention of the company. The man said little or nothing, although I feared every moment that he would be provoked into striking him. There was nothing said or done on the man's part sufficient to call out any display of temper. On expressing my surprise to Mrs. Eaton, whom I happened to meet a few days after, that he should have been allowed to go about in that state of mind, she replied that seeing his condition she tried to keep him at home, but he insisted on attending the sale, and that the best thing she could do was to go with him.

Int. 8. If you say that he has been under your care at the Butler Hospital more than once, please state who placed him there the second time, and the circumstances relating to his mental condition connected with his being so placed.

Ans. The second time he was placed in the hospital by his mother. She told me he had been getting highly excited, roving about and making himself very conspicuous by wild and extravagant conduct. He was bent on buying and selling in a reckless manner, and among other things had made an absurd purchase of some cattle. He had also advertised for sale his own stocks and securities without her knowledge or consent.

(Mr. Currey objected to what Mrs. Eaton said.)

Int. 9. If you say that he has been under your care at Butler Hospital more than once, state what was his mental condition the second time he was there; state particularly.

131 Ans. He was brought to the hospital by a policeman, and although his mind was not quite so chaotic as in the first attack, yet for a week or two he was noisy, violent, and abusive. After he got calm and quiet, and able to converse correctly on most subjects, there remained an unusual degree of mental exaltation. He admitted that for a time he had been beside himself, but declared that he was then all right, and demanded his discharge. His manner almost to the last of his second stay there was imperious and defiant, insulting to his inferiors, and scarcely respectful to his superiors and equals.

Int. 10. If you say that he has been under your care at Butler Hospital more than once, please state when he left there the second time, if more than once, who took him away, how he came to leave, and whether he was in a sane state of mind, in your opinion. State particularly the circumstances attending his leaving.

Ans. When he left the second time he was removed by his mother. He was very anxious to go, but she hesitated long before giving consent. I thought a longer delay would be better for him, but I did not strongly oppose, because my impression is I considered his mind about as clear and correct as it was ever likely to be. A longer stay might have strengthened his nervous system, and thus better prepared him for his future life.

Int. 11. If you say that George B. Ruggles has been under your care at Butler Hospital more than once, please state whether, since his leaving the last time, his relatives or friends have consulted you or advised with you in regard to his mental condition; if yea, who, when, and the circumstances; state particularly.

Ans. Both after the first and the second attack I occasionally met Mrs. Eaton, and she generally spoke of George, how he had seemed to

be, what he was doing, and how he was managing. On these points she spoke freely and fully, and solicited my advice. She was always apprehensive of a new attack, and was endeavoring to avert it by favoring his own occupation and plans so far as she could consistently with a proper regard for his health.

(Objected to by Mr. Currey.)

132 Int. 12. If you say that George B. Ruggles has on account of his insanity been under your care at Butler Hospital at two several times, and that you have seen him at least once beside those times, and suppose you know of his having another attack of insanity beside those times, please state from the knowledge of his mental condition thus acquired what your opinion would be as to his ever recovering a healthy condition of mind.

Ans. My knowledge of insanity leads me to believe that a person who has had three well-defined attacks of insanity within ten years will be likely never to recover that physical condition of the nervous system which is required for the exercise of the higher mental powers. I say three attacks, because I was informed both by George B. Ruggles and his mother he had an attack in Europe some time between 1850 and 1860. I saw nothing in George B. Ruggles to lead me to suppose that in respect to his future mental condition he would prove an exception to this general rule; that is to say, although able to converse and act correctly on all the common occasions of life, he was still laboring under a degree of abnormal exaltation, implying that the mind had not fully recovered its sound and healthy condition, and which was likely to continue.

(Objected to by Mr. Currey.)

Int. 13. If in answer to the last interrogatory you say that George B. Ruggles will never, in your opinion, recover a healthy condition of mind, state in what particulars you think his mind would exhibit disease.

Ans. The particulars in which his mind would show the effects of disease would be lack of good judgment or foresight, of accurate observation, and generally of that mental power requiring all the higher exercises of thought.

Int. 14. If you were told that George B. Ruggles had for several years lived quietly upon a farm, working the same, selling the produce, buying and selling the stock required for the management thereof, and that he had been found competent to attend to such business, would that, in your opinion, necessarily indicate that his mind had recovered a healthy condition, so that he could therefore be deemed competent to exercise foresight and judgment in the important affairs of life?

133 Ans. The mental deficiencies mentioned in the answer to the last interrogatory would not be incompatible with the performance of the common simple duties of a farmer, because the most of them are a matter of routine, and none imply the exercise of much penetration or sagacity. His remoteness from scenes of public excitement in the country, and his interest in agricultural pursuits, to which his tastes and temperament strongly dispose him, would be favorable to his mental condition.

Cross-examination:

Int. 1. (By Mr. Currey.) How many years since you have seen or had any personal knowledge or observation of Mr. Ruggles?

Ans. I have not seen or had any personal observation of Mr. Ruggles certainly during the last five years, and for some years, how many I am unable to state, previously.

Int. 2. Was the character of his mental disease at the times he was under your care unusual, extraordinary, or of a common character?

Ans. I think they were not unusual or extraordinary, but such as are frequently met in cases of insanity.

Int. 3. To what cause or causes did you attribute his mental condition?

Ans. I was unable to satisfy myself as to the exciting cause. I believed, however, that there was a strong hereditary element in his case, and that that was the most efficient agency in producing it.

Int. 4. Would you consider a patient of yours who, after his last treatment, had for 11 or 12 years managed successfully large farms, buying and selling stock, leasing lands and farms, and exhibiting prudence and judgment and foresight such as are exhibited by men of sound mind, and who were never reputed insane, would you consider him incompetent to advise in the management of a trust estate consisting of lands to be divided up and sold, of bank and other stock, as one of three trustees?

134 Ans. So far as the answer to this question depends upon the word "successfully," I reply that if successfully means a decided profitable result, then my conclusion would be that other things being equal he would be competent to the management of the trust mentioned. If the reply to this question depends upon the words "prudence, judgment, and foresight of a sound mind," my answer would be that competence for the purpose mentioned might require more of those qualities of mind than men of sound minds but of decidedly inferior quality would be likely to possess.

Int. 5. Are you acquainted with William M. Bailey, a neighbor of Mrs. Eaton's at the times of which you have spoken?

Ans. I am.

Int. 6. Do you recollect a conversation with him during the time of Mr. Ruggles' second treatment by you in the Butler Hospital, in which you complained of the character of his letters to his friends relating to yourself, in which you said that he represented you to be as crazy as he was, and that you would not submit to such letters being written by him, and that either you or he must leave the hospital?

Ans. I have no recollection of any conversation whatever with Mr. Bailey respecting Mr. Ruggles. I cannot conceive that I should have made such a remark to Mr. Bailey, because letters of that description are very frequently written by patients, and if I had regarded that as a sufficient reason for leaving, I certainly should not stayed in the hospital for 20 years.

Re-examination in chief:

Int. 1. In answer to x-int. 4, you say other things being equal; will you please explain what you mean thereby?

Ans. I can easily conceive that circumstances connected with the exercise of such a trust as is mentioned, that is, as a co-trustee, might be less favorable to the continuance of mental health than those connected with the duties of a farmer. They might be calculated more to try his patience, his forbearance and discretion—more likely to disturb his moral affections.

135 Int. 2. Please state whether any considerations, such as are imputed to you in the last cross-interrogatory, abuse of you by George B. Ruggles, entered at all into his leaving the Butler Hospital; and please state whether or not it is a very common thing for persons confined in the insane hospital to think others than themselves are insane, and to chafe at restraint exercised over them.

Ans. George B. Ruggles' treatment of me, whatever it may have been, had nothing to do with his discharge from the hospital. Indeed, my impression is that towards the last of his stay our relations were perfectly friendly and courteous. In reply to the latter part of the interrogatory, I would say that such a state of things is not uncommon.

ISAAC RAY.

Sworn to and subscribed before me, 22d, 3 mo., 1872.

HENRY PHILLIPS, JR.,
U. S. Commissioner.

Deposition of B. Lincoln Ray.

B. LINCOLN RAY, being duly sworn, deposes and says, in answer to the following written interrogatories propounded on behalf of the complainant:

Int. 1. What is your age and residence?

Ans. I am 35 years of age; I reside in Philadelphia.

Int. 2. What profession were you educated for, and what is your present occupation? If you have at any time been connected with hospitals for the insane, please state what hospital, and for how long a time, and in what capacity; and since leaving the hospital, if not now connected with one, please state whether you have given special attention to the subject of insanity.

Ans. I was educated for a physician, and am one now, in practice here. I was connected with the Butler Hospital for the Insane from August, 1859, to January 1st, 1867, as assistant physician. I have given special attention to the subject of insanity. From being
136 known as having been connected with an insane hospital, I have been consulted in cases of insanity, and have retained an interest in the subject, giving it considerable attention.

Int. 3. Do you know George B. Ruggles personally, and has he been at any time under your care? If yea, please state when, where, and how long he was under your care.

Ans. I know George B. Ruggles; he was under my care at Butler Hospital, Providence, R. I., for five or six months in 1860.

Int. 4. If you say that he has been under your care at Butler Hospital, please state what his mental condition was; state particularly.

Ans. In the earlier part of his stay he was maniacally excited; afterwards he was sullen, reserved, imperious in his manner, fault-finding, and generally disagreeable to all who came in contact with him. These traits I regarded and still regard as evidence in him of mental disease.

Int. 5. If you say that he has been under your care at Butler Hospital, please state when he left there, who took him away, how he came to leave, and whether he was in a sane state of mind, in your opinion, at the time he left; state particularly the circumstances attending his leaving.

Ans. I don't remember exactly when he left. I have no absolute knowledge who removed him, but always understood that it was his mother. I never heard of any one else having anything to do with his residence at or removal from the hospital. He was in the habit of importuning his mother to remove him, and my impression is that his removal resulted therefrom.

Int. 6. If you say that you know George B. Ruggles, and that he has on account of insanity been under your care at Butler Hospital, and suppose you were told that he had been in the same institution once

before, in 1850, and also that he had had another well-defined attack of insanity in Europe between 1850 and 1860, making three well-defined attacks in 10 years, please state, from the knowledge of his mental condition thus acquired, what your opinion would be as to his ever recovering a healthy condition of mind.

137 Ans. From my knowledge of the man, including the knowledge of the distinct attacks of insanity, I believed and still believe he will never be a perfectly sane man.

Int. 7. If, in answer to the last interrogatory, you say that George B. Ruggles will never, in your opinion, recover a healthy condition of mind, state in what particulars you think his mind would exhibit disease.

Ans. I think he would exhibit a lack of sound judgment and discretion. He would be likely to be more or less "weak-minded," and to act from insufficient motives or under the influence of whim or prejudice. He would be liable to do things utterly unreasonable; still, he might show in many things the greatest shrewdness.

Int. 8. If you were told that George B. Ruggles had for several years lived quietly upon a farm, working the same, selling the produce, and buying and selling the stock required for the management thereof, and that he had been found competent to attend to such business, would that, in your opinion, necessarily indicate that his mind had recovered a healthy condition, so that he could therefore be deemed competent to exercise foresight and judgment in the important affairs of life?

Ans. No. A man might be very industrious and might perform the ordinary duties of a farmer, and yet lack sound judgment in many important affairs. The quiet and unexciting life of a farmer moreover may be deemed the one best calculated to preserve his mental health. More exciting business would be very likely to aggravate or develop his mental weakness.

Cross-examination.

Int. 1. (By Mr. Currey.) When in the Butler Hospital, as stated in your direct answer, were you not there as assistant to your father, Dr. Isaac Ray?

Ans. Yes.

B. LINCOLN RAY.

Sworn to and subscribed before me March 22, 1872.

HENRY PHILLIPS, JR.,
U. S. Commissioner.

138 DEFENDANTS' DEPOSITIONS.

Examination of witnesses on behalf of the respondents before Sumner U. Shearman, examiner, at United States marshal's office, commencing on the 22d day of April, A. D. 1871.

Deposition of William M. Bailey.

WILLIAM M. BAILEY, having been duly sworn according to law, testifies and says as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is William M. Bailey; residence, North Providence; age, between fifty-five and fifty-six; merchant, general agent, and trustee.

Int. 2. State if you are the person named as one of the trustees under the will of Sarah B. Eaton; whether you have acted as trustee, and are a defendant in this suit.

Ans I am. I have, and I am.

Int. 3. State whether or not the other persons named as trustees in said will, George B. Ruggles and Amasa M. Eaton, also accepted the trust and have acted with you as trustees, and their relations to the testatrix.

(Objected to.)

Ans. They have. They are the sons of Mrs. Sarah B. Eaton. They have acted as trustees with me in all important matters. They accepted the trust in the same manner which I did.

Int. 4. Please explain what you mean by accepting the trust in the same manner which you did.

139 Ans. I have no recollection of any other acceptance of the trust than entering upon and discharging the duties of a trustee.

Int. 5. State whether or not the trustees, on or about February or March, 1865, advanced the said Amasa M. Eaton the sum of $25,000 out of the trust-estate as one of the beneficiaries under his mother's will. If yea, state the circumstances of such advancement, his business at the time, and business prospects and relations.

Ans. In the early part of 1865 they made such an advance to him in different sums out of the trust-estate of Sarah B. Eaton. The precise time I cannot give from recollection. Sarah B. Eaton and myself had executed a bond to the national bank, now the Old National Bank, for $24,000, to secure the payment of the obligations of Bailey & Eaton to that bank. At the time of her death, August 1, 1864, paper held by that bond of Bailey & Eaton was running to maturity, which it was desirable to renew from time to time. To pay the notes so maturing would have seriously interrupted the business of Bailey & Eaton, and injured their credit. Believing that an advancement by the trustees would obviate the necessity, and be likely to promote the advancement and success of Amasa M. Eaton in his business relations, the trustees decided to make such an advancement. The firm of Bailey & Eaton were then engaged in mixing and selling the products of the Union Coal and Oil Company, and had been so engaged since 1862, and had succeeded in successfully introducing the oils of that company into the mills of many of the large manufactories of New England in direct competition with the best sperm oils, with every prospect of a continuing and successful business. At the time of this advancement, James Y. Smith and myself were endorsers for Bailey & Eaton, my son, William M. Bailey, jr., being the partner of Amasa M. Eaton, in the firm of Bailey & Eaton.

Int. 6. State whether or not, after such advancement, said firm of Bailey & Eaton failed in business; the time and circumstances of such failure.

Ans. They did fail in business; made an assignment the 1st of
140 March, 1867. At that time they were under very heavy obligations for the purchase of the stock they held in the Union Coal and Oil Company, for acceptances made for that company, and for purchases of other property. The embarrassments and impending bankruptcy of the Union Coal and Oil Company, and the large amount of obligations assumed by Bailey & Eaton, by myself and James Y. Smith, rendered it desirable that they should assign their property for his and my protection, with the hope of saving James Y. Smith from the necessity of making an assignment also.

Int. 7. State for whom you mean Bailey & Eaton had assumed a large amount of obligations.

Ans. For the Union Coal and Oil Company, in connection with James Y. Smith, myself, and other stockholders of the Union Coal and Oil Company.

Int. 8. State the names, business standing, and character of the principal stockholders in said Union Coal and Oil Company.

Ans. William C. Chapin, of Lawrence, Mass.; Rowse Babcock, of Westerly; James Y. Smith, of Providence; I think James S. Little, of Boston; I am not sure as to that, but Mr. Little, who is selling-agent of the Pacific Mills; Joseph Lea & Co., I think, of Philadelphia; a Mr. Remington, and S. Angier Chase, of Fall River; I think a Mr. Dunbar, of New York, a partner, or in some way associated with Mr. Little. The most of those that I have named were of high standing and character as merchants and manufacturers and reputed wealth. Besides these there were several stockholders in Kentucky—a Mr. Coons, James Barber, Marcus A. Finch, and others whose names I cannot now recall. I have already stated that Bailey & Eaton and myself were large stockholders in the concern.

Int. 9. State, as far as you know, the amount of stock held in said company by James Y. Smith, and his official relations to said company.

Ans. I think he held $25,000, the cost value of the shares held by him in that company. He was a director, and during the latter part of the active operations of the company acting president. By latter part I mean during a part of 1866 and the early part of 1867.

141 Int. 10. State more particularly who are William C. Chapin, Rowse Babcock, and Joseph Lea, and their respective business relations, so far as known to you, and their official relations to the Union Coal and Oil Company.

Ans. William C. Chapin was at that time the manager of the Pacific Mills at Lawrence, Mass., and president of the Union Coal and Oil Company, and the largest stockholder in the Union Coal and Oil Company. I cannot state the precise amount of stock held by him in the Union Coal and Oil Company, but believe it to have been between a $160,000 and $200,000, or upwards. Rowse Babcock, a gentleman of large reputed wealth, a successful manufacturer, of the firm of Babcock & Morse, of Westerly, had $25,000 worth of stock in the Union Coal and Oil Company; was a director in that company. Joseph Lea or Joseph Lea & Co., commission merchants in New York and Philadelphia, or in firms in those cities, were owners of about $40,000 of the stock of the Union Coal and Oil Company. Joseph Lea was a director in the Union Coal and Oil Company, and actively engaged as such.

Int. 11. State your own connection and official relation to said company.

Ans. I was a stockholder with James Y. Smith, stock standing in our joint names. I had no official relation to said company until September 1st, 1866, when I entered upon the duties of treasurer of said company at the earnest and urgent solicitation of some of the prominent stockholders and representatives of other stockholders in said company, without any fixed salary or compensation, and at a period when the obligations of said company were very large and embarrassing. I accepted said office after it had been tendred by telegram to Mr. Abbott, then in Maysville, Kentucky, and declined by him, the book-keeper of the company then at Maysville. I accepted this office upon the assurance of the principal stockholders or their representatives that I should be sustained with the credit and capital necessary to maintain its credit and carry on its operations.

Int. 12. State, to the best of your present ability, the annual amount

of the business of said company while you were its treasurer and Bailey & Eaton its agents.

142 Ans. I think at the time I accepted the office of treasurer the company was producing from 850,000 to 1,000,000 of gallons of oil per annum, then selling, after being refined and separated, from 80 cents to 90 cents, and I think in some instances $1.00 per gallon. The product of the company largely increased after the purchase in February, 1865, by the eastern stockholders, who ordered a very large expenditure to increase its productive capacity and develop its coal-mines. I cannot state from recollection the annual amount of its business during the agency of Bailey & Eaton, or my connection as treasurer with said company, as I have had no access to the books of said company since they were removed to Lawrence, Mass. I was treasurer from September 1, 1866, to May or June, 1867.

Int. 13. State who, to your knowledge, acted as agents for the eastern stockholders whom you have named, in their purchase of the property of said Union Coal and Oil Company.

Ans. Bailey & Eaton and Amasa Mason, then in their employ, and acting in conjunction with most of the principal stockholders, meaning William C. Chapin, James Y. Smith, and William M. Bailey.

Int. 14. State the circumstances and conferences held together by one another under which the gentlemen you have named as eastern stockholders became purchasers of stock in said company, stating times and places of such conference.

(Complainant's counsel objects to the witness, during his examination, consulting any written papers without first submitting them to his inspection when requested, and complainant's counsel now requests that the papers now consulted by witness may be submitted to his [that is, complainant's counsel] inspection. The witness here states that he should like the instructions of the court whether he shall present private and personal memoranda used by him to refresh his memory as to dates, persons, and particulars, and will, under the instructions of the examiner to do so, present such papers, or will preserve them to be presented to the court on the trial of the case, if so directed by the court. The examiner declines to give any instructions in the premises.

143 Complainant's counsel objects to witness answering the 14th interrogatory, after consulting the written papers referred to, and which have not been submitted to complainant's counsel for inspection. He, the witness, has consulted written papers and has submitted them to his own counsel since the objection was made, and at the request of defendant's counsel.

Defendants' counsel sees no objection to witness submitting the papers referred to to the complainant's counsel, and advises him so to do, unless they contain matters not connected with the Union Coal and Oil Company, and relating to parties not connected with this suit. Witness remarks here that, under the advice of counsel, I will present the papers, but have objected to doing so, because some of the memoranda referred to confidential political relations and pecuniary obligations incurred by the witness for James Y. Smith, and private and personal memoranda relating to a member of James Y. Smith's family, which I had no intention of using, excepting for the purposes of refreshing my memory as to dates, and make my testimony exact and reliable. If, after this statement, the sons-in-law of James Y. Smith, who are the complainant and complainant's counsel, desire me to present the papers referred to, I will do so. The counsel for the defendants requests the examiner to state that he does not advise the witness to submit any papers or parts

of papers, which he has not consulted, for the purpose of refreshing his recollection of matters, to which he has testified in this cause, and which relate to matters foreign to this cause.

Mr. Rogers, of counsel for the complainant, insists upon his objection to the witness consulting papers while he is under examination which have not been submitted to complainant's counsel, and the contents of which such counsel is ignorant of, and again makes request of the witness that such papers so consulted may be submitted to the inspection of complainant's counsel.

Defendants' counsel here withdraws 14th interrogatory.)

Int. 15. State, to the best of your recollection, any meetings of parties who became stockholders in the Union Coal and Oil Company, assembled or gathered together for the purpose of consulting upon the pur-
144 chase of stock in said company; where said meetings were; at what time or times; at whose house or houses in Providence or elsewhere, and who were present.

Ans. The first meeting I can recall was when the gentlemen from Kentucky first came to Providence, about the 20th or 21st of October, 1864. Those gentlemen called at my office, in Providence, with Bailey & Eaton and Amasa Mason. They were introduced to me by Bailey & Eaton, or Mr. Mason, I do not remember which, and to James Y. Smith, when the subject of the purchase of the stock of the Union Coal and Oil Company was discussed. The most of the gentlemen then consulting upon this purchase were invited to dine at James Y. Smith's house on or about the 22d of October, 1864. After the visit to James Y. Smith's house, the parties generally returned to my office, when further conversation was had upon this subject. Subsequently, after the return of these gentlemen to Kentucky, the subject of this purchase was considered by James Y. Smith and myself, with Byron Sprague, William H. Reynolds, William S. Slater, and Jacob Dunnell, at different times; sometimes with several of the named gentlemen together, and sometimes separately. At these conferences it was decided to form a party to visit the property of the Union Coal and Oil Company in Kentucky and West Virginia. During the latter part of these conferences, I think William C. Chapin consulted and conferred with some of the other parties upon the subject of this purchase. It was proposed that Prof. Hill should go with or be sent out to inspect and report upon the property of the company. It was first decided that they would go out immediately after the presidential election. Gov. Smith stated that he did not feel well and could not go. Mr. Dunnell also stated he could not go, but thought that his son-in-law, or proposed son-in-law, Denney, would go. Mr. William C. Chapin reported that he could not go at the time proposed, but probably would go later with Mr. Fallon, the chemist of the Pacific Mills. Subsequently, the parties failing to organize a party to go, I left Providence on or about the 17th or 18th of November, 1864, visited the property both in Kentucky and Virginia, and returned early in December, when I reported my observations fully and in
145 detail to James Y. Smith, William C. Chapin, and some of the other gentlemen whom I now do not recall. Some time in the month of November, I think, Byron Sprague and Reynolds were involved in some questions with the Government, which led to their being dropped as probable or desirable associates, and Mr. Chapin, who proposed to take an active interest in the management of the company, if the purchase was made, expressed the desire that it should be limited to but few purchasers. Subsequently to my visit to Kentucky, Mr. Barber and some other gentlemen, with Finch, I think, of New York,

then a director in the company, came here and conferred with Gov. Smith and myself, and, I think, with Mr. Chapin; but my impression is that some of them went to Lawrence to confer with him. I think this was in the last of January or the first of February, 1865. At or about that time the gentlemen from Kentucky dined at my house with Gov. Smith and others, and subsequently at my house further considered the subject of this purchase. That, I think, was the last conference had here with those gentlemen prior to the purchase of the stock.

Int. 16. You have stated in your answer to the last preceding interrogatory a meeting was held at Gov. Smith's house, at which persons were invited to dine, on or about October 22, 1864; please state if so invited by Gov. Smith, and whether he was present at said meeting, and the business you have mentioned was then introduced and discussed.

Ans. I am not sure whether he invited them or I did at his request, or some of the other gentlemen present. Gov. Smith was present. I do not think the business was discussed at his house, for soon after the dinner the gentlemen returned to my office. I think part of them went off in the cars to Boston.

Int. 17. You have stated that James Y. Smith and yourself were endorsers of Bailey & Eaton; state from what time to what time, the amount of such endorsements of said Smith with you, the family relations of yourself and said Smith, and your respective family relations with Bailey & Eaton, if any.

Ans. I think from about August 4, 1864, down to March, 1867. The aggregate amount of such endorsements I cannot state. He did not always endorse their paper with me, the amounts being compara-
146 tively small at first, and until the purchase of the Union Coal and Oil Company's stock by Bailey & Eaton, and increasing up to the time of their assignment on March 1, 1867, when such endorsements amounted to about $150,000 or $160,000, perhaps a little more, perhaps a little less. James Y. Smith is my brother-in-law, our wives being sisters. William M. Bailey, jr., is my son, the nephew of James Y. Smith's wife. With Amasa M. Eaton there were no family relations with either of us

Int. 18. State whether or not you, as one of the trustees under Sarah B. Eaton's will, ever gave any pledge or assurance to the said Smith, out of or by means of her estate, or out of said Amasa M. Eaton's interest in said estate, of indemnity against loss by such endorsements, as an inducement to him for the same.

Ans. I never did.

Adjourned until Monday next at 11 o'clock.

On account of the absence of Mr. Rogers, adjourned until Wednesday next at 10 o'clock.

For same reason adjourned until Thursday at 10 o'clock.

Adjourned until Friday at 10 o'clock.

Int. 19. State whether or not, in point of fact, you personally or, to your knowledge, Amasa M. Eaton, or yourself, in conjunction with said Eaton, ever exhibited to said James Y. Smith any list, inventory, or statement of the property of the trust estate left by Sarah B. Eaton, in which said Amasa had an interest, especially with any view of procuring his

endorsement of the paper of Bailey & Eaton, or of assuring him against loss by endorsing for them.

Ans. I never exhibited to James Y. Smith any list or written statement of Sarah B. Eaton's property with a view or for the purpose of influencing the said James Y. Smith to endorse the paper of Bailey & Eaton, and to my knowledge Amasa M. Eaton never did. The trust estate in which Amasa M. Eaton had an interest is the estate to which I
147 refer. I never exhibited to said Smith, in conjunction with Amasa M. Eaton, any such statement for any such purpose.

Int. 20. State whether or not the trustees under said Sarah B. Eaton's will ever, at any time, before or after the assignment of Baily & Eaton, and said Amasa M. Eaton, March 1, 1867, which you have mentioned, had any settlement or settlements with said Amasa M. Eaton of, or in relation to his share of, or interest in, or income from, said Sarah B. Eaton's estate, as a beneficiary under her will, or in relation to the share of said income to which he was or is entitled; if yea, state the time or times of such settlement or settlements.

Ans. My recollection is not distinct as to the times of such settlements prior to the assignments of Bailey & Eaton and Amasa M. Eaton. I think divisions of the income were made to the beneficiaries prior to the 1st of February, I think, 1867, at several different periods. Since 1867, the date I have mentioned, no division of the income has been made and concluded by the trustees, until this year. The precise date I do not remember. The recent settlement referred to since the assignments of March 1, 1867, placed Amasa M. Eaton's proportion of the income which he would have received, but for these assignments and his bankruptcy, in a suspense account.

Int. 21. What was done by the trustees in the recent settlement referred to as taking place since said assignments of March 1, 1867, in reference to the shares of the income of the other beneficiaries named in said will?

Ans. They directed the income account to be made up. Charges of the trustees were agreed upon, and the income distributed to two of the beneficiaries or placed to their credit. I mean George B. Ruggles and Charles F. Eaton, the proportion of Amasa M. Eaton being carried to suspense account.

Int. 22. State whether or not the trustees ever, at any time after said assignment of Bailey & Eaton and Amasa M. Eaton, of March 1, 1867, paid, advanced, or made over to or for the use of said Amasa M. Eaton, as a beneficiary thereto entitled, any part, either of the capital or income, of said trust estate; if yea, state the time or times the sum or sums, the name or names of the trustee or trustees, by whom paid, advanced, or made over.

148 Ans. They did not, and have not.

Int. 23. State whether or not the will of said Sarah B. Eaton contained this provision: "And in case, after the cessation of said income as to my said sons, respectively, otherwise than by death, as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons, respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons, respectively, would have been entitled under the preceding trusts in case the forfeiture hereinbefore provided for had not happened;" and if yea, state whether or not the trustees under said will, since Bailey & Eaton's assignment, and said Amasa M. Eaton's individual assignment, of March 1, 1867, have ever at any time exercised or attempted

to exercise in behalf of Amasa M. Eaton, as a beneficiary, under said will, the discretion vested in them by the before recited clause in said will, in paying to or applying for his use any part of the income of said trust estate.

(Objected to.)

Ans. I believe the will of Sarah B. Eaton to contain such a clause as has been recited. The trustees have not exercised such discretions since March 1, 1867, nor have attempted to exercise it.

Int. 24. State whether or not said trustees, subsequent to said Amasa M. Eaton's petition and the assignment of his property in bankruptcy, have conferred or consulted together with reference to paying to or applying for his use, as a beneficiary under said will, any portion of the income of said trust estate.

(Objected to.)

Ans. They have done so in the recent settlement just referred to, in the manner I stated in answer to interrogatory 20.

Int. 25. In your answer to the last preceding interrogatory you say "they have done so in the manner I stated in answer to interrogatory 20;" state if you mean the result of such conference or consultation was
or was not to place the portion of the income to which said Amasa
149 M. Eaton would have been entitled but for the assignments before
mentioned and the said proceedings in bankruptcy, in a suspense account.

Ans. It was to place it in such suspense account.

Int. 26. State your knowledge of the connection of Bailey & Eaton with the aforementioned James Y. Smith in the purchase of the property of, and in the organization of, the East Providence Land Company, and in the management of its affairs.

Ans. As one of the executors of Tristam Burges' will, I invited the attention of James Y. Smith, Richard J. Arnold, Bailey & Eaton, as well as that of many other capitalists, to the purchase of Burges Point, the property so advertised, giving the greatest and most extended publicity, by advertisement, circulars, and personal application to the sale of the property at public auction. I advised James Y. Smith and Mr. Arnold and Bailey & Eaton to purchase the property if they could do so at a price satisfactory to themselves. I also stated that, as an executor, I could not have anything to do with the purchase of the property. They attended the sale; the property was put up by the executors to be sold to the highest bidder over $8,000. Without consultation with me, or reference to me in any manner whatever, at the time of sale, and without my knowing at the time who was bidding upon the property, after a protracted delay and many biddings, it was struck off to Amasa M. Eaton. A deed was made subsequently to Bailey & Eaton, and they paid for the same, raising the money upon their own note endorsed by James Y. Smith and Richard J. Arnold, which was discounted at the then National Bank, in which I was a director. Subsequently a charter was obtained from the general assembly of Rhode Island of the East Providence Land Company. An organization of that company was made by, I think, the election of Amasa M. Eaton as treasurer and myself as president. I am not quite sure whether there was a board of directors or not; if there was, James Y. Smith and Richard J. Arnold were the directors. This company organized with a capital, I think, of $15,000 paid in, of which James Y. Smith had one-fourth, Richard J. Arnold
one-fourth, Bailey & Eaton one-fourth, and William M. Bailey
150 one-fourth. The company purchased of Bailey & Eaton the property which Bailey & Eaton had purchased and received a convey-

ance of from the executors of Tristam Burges' will, at the aforesaid auction sale. After such organization and purchase, Amasa M. Eaton took the active management of the business, under the constant advice and direction, individually and in concert, with myself and James Y. Smith, James Y. Smith and myself frequently visiting the property with and without said Amasa M. Eaton, and advising and directing as to its development and improvement by grading, filling, and leasing its territory, in the hiring of a dredging-machine, and the subsequent purchase of a dredging-machine at a cost of about $9,000. Under such united advice and action, a very considerable sum was expended in preparing the land for a marine railway, which was leased under such advice, I think, to the Marine Railway Company. I am not sure whether it was to a company or Charles T. Childs and others, at a rental, I think, of $500 per year, altogether involving a very considerable debt upon said East Providence Land Company. Such management, advice, and direction continued uninterrupted until the assignment of Bailey & Eaton.

Int. 27. Please state whether or not, at said auction sale, you saw James Y. Smith present and in consultation with said Amasa M. Eaton during the bidding.

Ans. I saw James Y. Smith present at the auction sale; saw him standing beside Amasa M. Eaton during a part or the whole of the bidding, I am not sure which, for I studiously kept aloof from all the bidders on the ground, and do not know what was said or done by James Y. Smith, Amasa M. Eaton, or Richard J. Arnold at such auction sale.

Int. 28. State the time, as near as you are able, of said auction sale, and the date and amount of Bailey & Eaton's note which you have mentioned, endorsed by James Y. Smith and Richard J. Arnold, in your answer to the last preceding interrogatory.

Ans. I have a memorandum in my pocket that will give the exact date of the sale. If there is no objection, I will refer to it for that
151 date. The date of sale was August 6, 1864. I cannot state the exact date of the note. I think between the 9th and 12th of August, 1864, and, I think, the amount of the note was $12,500, and amongst the earliest endorsements of James Y. Smith on Bailey & Eaton's paper. I think the second or third note that he endorsed.

Int. 29. State what arrangement, if any, you had upon your own account with James Y. Smith regarding his endorsing Bailey & Eaton's paper after and with you, and the time of such arrangement, or about the time.

Ans. Within a day or two after the death of Sarah B. Eaton, August 1, 1864, I stated to James Y. Smith in my office that Bailey & Eaton would have paper maturing which had been endorsed by or was guaranteed by Sarah B. Eaton and myself which it would be desirable to renew. I told him I would like to have him endorse their paper with me, and I would protect him for such endorsements; that I thought when the trustees under Mrs. Eaton's will, of which I was one, received from the executors of her will the personal property, that I would advise, and I thought the trustees would be willing to make to Amasa M. Eaton an advancement under the provisions of her will of about $25,000. I stated at the same time that the property was all in trust, and that Amasa M. Eaton would be entitled to one-fourth of the income of her estate. At the time of this conversation I did not know that I was named as one of the executors of her will. James Y. Smith said that he would do so, and subsequently did endorse for said Baily & Eaton without any further assurance from me individually or as trustee under said

Sarah B. Eaton's will, in regard to security or protection for such endorsements, from that time to March 1, 1867.

Int. 30. Please state who were the executors of Mrs. Eaton's will.

Ans. William M. Bailey, George B. Ruggles, and Amasa M. Eaton.

Int. 31. State the circumstances within your knowledge connected with the making of the inventory, returned by the executors, of the personal property belonging to Mrs. Eaton's estate.

(Objected to.)

152 Ans. To the best of my recollection, I advised with Amasa M. Eaton with regard to the making of such inventory. I think I suggested James Y. Smith as one of the appraisers, and told him (Amasa M. Eaton) what my practice had been in making up such inventories, and ascertaining the value. I think Mr. Eaton made out a list of the personal property, and that I told him, upon exhibiting the same to me, that I had generally appraised such property as was known to be worth far above its par value. I think Mr. Eaton suggested Mr. Burlingame as one of the appraisers. Who suggested William M. Bailey, jr., as one I do not recollect distinctly, but think it was Mr. Eaton. I have an impression that such a list of the property or the inventory was looked over by me at some conference between Mr. Smith and Mr. Eaton. I think casual and accidental.

Int. 32. State whether or not, to your knowledge, before or after the purchase of the Union Coal and Oil Company was made by the eastern stockholders, it was discussed amongst them that 500 shares of the stock in that company was to be given to Bailey & Eaton for their services in bringing about the purchase; and if yea, whether James Y. Smith was present at any such meetings, and approved or disapproved of such donation of shares for their services.

Ans. For several months prior to the purchase of the stock of the Union Coal and Oil Company by the eastern stockholders, the subject of the purchase was very frequently discussed, and at many, if not almost all, such discussions it was stated and understood that Bailey & Eaton were to have 500 shares of the stock donated to them, if the sale was effected. James Y. Smith knew of such proposition, assented to, recommended, and approved of such donation to Bailey & Eaton, both before and after the purchase of the stock in said company by the eastern stockholders, and James Y. Smith was frequently present when the subject of such donation to Bailey & Eaton was discussed. At the time of Rowse Babcock's purchase from William C. Chapin of about $25,000 worth of this stock, I remarked to James Y. Smith that, at the rate at

153 which Mr. Babcock had purchased, if Bailey & Eaton would sell their 500 shares of donated stock it would largely relieve their purchase of $50,000 worth of the stock. It was proposed to pay $450,000 for 7,500 shares of the Union Coal and Oil Company's stock in the earlier negotiations, and sometimes 8,000 shares was named. In the later negotiations I suggested that the price paid for 7,000 shares should be $400,000, and in that way Bailey & Eaton would have 500 shares donated them without expense to the eastern stockholders. Upon that basis the purchase was finally concluded.

Int. 33. State whether or not you, as one of the endorsers of Bailey & Eaton, and James Y. Smith as the other, to your knowledge, knew and approved or disapproved of the purchase by Bailey & Eaton of $50,000 worth of the stock of the Union Coal and Oil Company in addition to their donated shares.

Ans. I knew of their intention to purchase, and approved of their purchase after it was made. James Y. Smith knew, and was present at

different times when the subject of Bailey & Eaton's purchase of that stock was referred to, and never, to my knowledge, before or after such purchase by them, dissented from or disapproved of such purchase up to the time of their assignment, March 1, 1867.

Int. 34. You have mentioned that you personally requested James Y. Smith to endorse with you the paper of Bailey & Eaton. State whether or not, at and before the time of such request, and during the period of your respective endorsements for Bailey & Eaton, you and the said Smith were accommodation endorsers for each other; and if so, for what period of time, and generally for what amount, from time to time.

(Objected to.)

Ans. We were such accommodation endorsers during the whole time of his endorsement for Bailey & Eaton. James Y. Smith, I think, commenced to endorse for me in 1861, when I was building the Westminster-street block. He may have occasionally before that time *have* endorsed for a small amount, perhaps a single note. From 1862 his endorsements for me were largely increased by payments upon the block and many joint enterprises and purchases in which we were mutually
154 interested. From 1863 to 1867 my endorsements for him for his individual accommodation amounted (including my paper advanced for his accommodation) to about $400,000. The amount of his endorsements for me I am unable to state in the aggregate, but, at the time of my assignment, amounted to, I think, about $139,250; but I am not sure as to the amount.

Adjourned until Saturday, the 13th instant, at 10 o'clock.

Int. 35. State if you received from A. M. Eaton while in New York a telegram relating to proposed purchase by Bailey & Eaton of $50,000 worth of stocks of the Union Coal and Oil Company; and if yea, state when and what conversation you had with James Y. Smith in regard to said Bailey & Eaton's purchase.

(Objected to.)

Ans. I do not recall receiving a telegram from Mr. Eaton. I may have received one during the progress of the negotiation from Bailey & Eaton. Mr. Eaton returned from New York on Saturday, the 4th of February, 1865, I think, and communicated to me the purchase by Bailey & Eaton of $50,000 worth of stock in the Union Coal and Oil Company. After considering the subject myself, I decided to confer with Gov. Smith on Monday following, and refer to his decision the amount of stock which Gov. Smith and myself would take, as I was not quite satisfied with the precipitancy with which Mr. Chapin had closed the purchase with the directors of the Union Coal and Oil Company in New York. On Monday, the 6th of February, 1865, I had such a conference with Gov. Smith in my office; referred to the statement made by him at my house to Mr. Barber, the treasurer of the company, that, if matters came up satisfactory in New York, we would take $100,000 of the stock. I stated that, under the circumstances, I thought we ought not to take that amount. And yet I did not think we ought to desert Mr. Chapin entirely. Gov. Smith said substantially that he felt as I did about it. I then stated to him that, if we took $50,000, coupling that with the $50,000 which Bailey & Eaton had agreed to purchase, it would seem to represent the $100,000 which he had represented
155 would be taken. To this suggestion Gov. Smith assented, which gave to each of us $25,000, and to Bailey & Eaton $50,000. Thereupon I addressed to William C. Chapin, in New York, a letter dated February 6, 1865, which I submitted to Gov. Smith, before mailing it, to which he assented and approved, a copy of which I annex to

my deposition, marked A. A few days after this letter was written, Mr. Chapin came on from New York, stopped at my office late in the afternoon or early in the evening, and conferred with Gov. Smith, myself, Bailey & Eaton, one or both of them, in reference to the contract for the purchase of the Union Coal and Oil Company stock. Mr. Chapin then stated that he felt entire confidence that he could place with his friends the whole amount of the purchase, and believed he could place a $1,000,000 in twenty-four hours in Boston, and with his friends, and if we felt any reluctance to going on with him and taking the amount of stock we had indicated, he would release us from any obligation to take any part of it. Subsequently, finding that he could not dispose of the stock as readily as he expected, and in considering the claim of Bailey & Eaton for 500 shares donated to them, he claimed that as Gov. Smith and myself had not taken the $100,000 which he understood we would take, he thought Bailey & Eaton should not have the whole of the 500 shares donated to them, but as he had taken the burthen of the purchase upon himself, it ought to be divided with him. The subject of this donated stock led to many discussions and considerable correspondence with Gov. Smith and myself and Mr. Chapin; the letters upon the subject being written by me, and generally, if not invariably, submitted to and approved by Gov. Smith before being sent. Subsequently the agreement for this purchase made by Mr. Chapin and Bailey & Eaton, in New York, to the best of my recollection, was submitted to Gov. Smith and myself in Providence, by Mr. Chapin, for our signatures, agreeing to take the $50,000 of stock for ourselves. That agreement, to the best of my recollection, was signed by Gov. Smith, either for himself and me, or by us both. Subsequently, on the 25th of February, 1865, we jointly executed a power of attorney to William C. Chapin, authorizing him to make the necessary drafts, notes, or
156 payments for this stock, in Maysville, Kentucky, a copy of which from my letter-press I annex to this deposition, marked B.

Int. 36. Please state any directions which you, as one of the trustees under Mrs. Eaton's will, gave to Amasa M. Eaton, after March 1, 1867, in relation to the manner of making up or keeping the income account of the trust estate, or in relation to the distribution of the income.

(Objected to.)

Ans. I have stated to Mr. Eaton many times since his assignment in March 1, 1867, that he could not, in making up the books, make a distribution from the income of the estate of Sarah B. Eaton, except approximately, for the purpose of indicating to Mr. Ruggles and Mr. Charles F. Eaton the probable amount they could depend upon as their share. That so far as he was personally concerned, the trustees could not apportion his part or pay it to him.

Int. 37. In relation to the powers of attorney given by the trustees to Amasa M. Eaton to draw checks on the income or funds of the trust estate, annexed to his deposition, was it or not the object of the trustees to authorize said Eaton to apply the moneys drawn on said checks to his personal use as one of the beneficiaries under his mother's will; and if not, for what purpose or purposes was such authority given?

(Objected to.)

Ans. Powers of attorney were not given for that purpose, but were given for the purpose of paying for investments, current taxes, and expenses of the estate, of the farm, and of improvements being made upon the estate, and the general wants of the estate, and payments to George B. Ruggles and Charles F. Eaton.

W'M M. BAILEY.

A.

(Copy.)

PROVIDENCE, *February 6th*, 1865.

W'M C. CHAPIN, ESQ., *New York:*

DEAR SIR: Your notes of the 3d and 4th instant have been received. These, with the agreements made, have been considered as care-
157 fully as limited time and constant interruptions would permit, and, I confess, not without embarrassment. I did not reply to your first note, thinking you might be here about as soon as you could receive it with any effect.

I did not suppose, when the parties left here, that a purchase would be made, until after a conference between you, Gov. Smith, and myself. My conversations with the gentlemen had been very desultory, and my examination of their statements and papers by no means as critical as they should have been.

I was disappointed that their business the past year had added $15,000 or more to their debt, over their personal property, and wished to consider with you the possible, if not probable, contingencies to which we might be liable, with similar unsatisfactory results.

It seemed to me there should have been conditions to protect us against important errors in statements, and also as to the future organization and management.

I was satisfied the gentlemen could make no exhibit which would hurry others into a purchase, and that we might make a conditional arrangement, for purchase and time enough to place the stock, or reduce the amount we should take. While I felt the matter should be determined, or approximately so, I thought, under the peculiar embarrassments of our meeting, and the condition of their accounts, we might properly keep the matter open, wholly or in part.

Originally it was proposed that some nine parties should join and take the whole, i. e., $50,000 each. Gov. S. and myself together proposed to take $50,000 (as much as I could personally afford, and as he wished.) The delays incident to the consideration then, rendered it somewhat uncertain of accomplishment. Unless parties were ready to join in the purchase, so that it should not become absorbing or embarrassing to us, we should have declined.

Although we should have kept the matter open, or had such conditions as I have referred to, had we been present, Gov. S. and myself are willing to take, together, $50,000, and, as far as we can, aid if necessary in finding parties to take what may be to dispose of. But rather than be considered an embarrassment, we will cheerfully with-
158 draw, if it would be more agreeable to you, or in any way facilitate your arrangements for placing the stock in New York or elsewhere.

We do not by anything we have written intend to cast any blame upon you, neither have we any feeling of censure or reproach in the matter, our regret being that we could not have all been together in the consideration and final arrangement.

With the kindest consideration, I am truly yours,

W. M. BAILEY.

B.

(Copy.)

Know all men by these presents, that we, James Y. Smith and W.

M. Bailey, of Providence, Rhode Island, hereby constitute and appoint William C. Chapin, of Lawrence, Massachusetts, our true and lawful attorney, for us and in our names to sign any notes, drafts, or bills of exchange, make any endorsements or acceptances of notes, drafts or bills of exchange, which may be necessary to be made, accepted or endorsed, in payment of the balance due on seventy-five thousand dollars, being the proportion of the purchase of stock in the Union Coal and Oil Company, of Maysville, Kentucky, made by him and Bailey & Eaton under a certain contract dated at New York, February 3d, 1865, for ourselves, and Joseph Lea & Co,, of Philadelphia, or Joseph Lea; to receive transfers of the stock so purchased, or any other stock in said company which may be issued to us collectively or individually, and to appear for, represent and vote for us upon any stock in said company, which may, at the time of any meeting of the stockholders thereof, stand in our names, or in the name of either of us, as fully, to all intents and purposes, as we could do if personally present, with full power of substitution of one or more attorneys, to vote upon any part or all of said shares of stock, at any legal meeting of said corporation, we hereby ratifying and confirming all the acts of our said attorney which he may lawfully perform by virtue of these presents.

Witness our hands and seals at Providence, Rhode Island, this twenty-fifth day of February, 1865.

JAMES Y. SMITH.
W. M. BAILEY.

In presence of—
EDWARD E. COOK.

159 *Deposition of Amasa M. Eaton.*

AMASA M. EATON, having been sworn according to law, testifies and says as follows:

Int. 1. State your name, residence, and occupation, and are you a defendant in this suit?

Ans. Amasa M. Eaton; thirty years of age this month; am a merchant, or have been; am not now, as I am not in business; my residence is North Providence; I am one of the defendants in this suit.

Int. 2. Are you the Amasa M. Eaton named as one of the trustees and one of the beneficiaries, under the last will of Sarah B. Eaton, mentioned in the complainant's bill?

Ans. I am.

Int. 3. State whether or not the trustees under the said will advanced to you the sum of $25,000 as one of the beneficiaries? If yea, state the time and object of such advancement.

Ans. They did. The exact date I do not remember. I think prior to March, 1865. The object was to enable me to put it into the firm of Bailey & Eaton, to advance our business interests.

Int. 4. State whether or not, after such advancement, said firm of Bailey & Eaton failed in business, the time of such failure, and whether the same failed you individually.

Ans. They did. About March 1st, 1867. I also made an individual assignment.

Int. 5. State whether or not said firm of Bailey & Eaton, at the time of their failure, made an assignment to the complainant in this suit for the benefit of their creditors, and whether you personally at the same time assigned your individual property to the same complainant; and if yea, annex copies of said assignments.

Ans. They did. I did. I refer to Exhibits B and C, annexed to the complainant's bill, as copies of said assignments.

Int. 6. State whether or not the trustees under your mother's will, either before or after said assignments, had any settlement with
160 you or you with them in relation to your share of the income from your mother's estate as one of the beneficiaries under her will? And if yea, state the time or times of such settlement or settlements, and whether more than one.

Ans. They had before my assignment. There was more than one such settlement, the last one being January 31, 1867.

Int. 7. State whether or not the trustees under said will ever at any time, after the date of the assignment of Bailey & Eaton, and the date of your individual assignment, paid, advanced or made over to you, as one of the beneficiaries of your mother's estate, any part, either of the capital or income, of said estate? If yea, state the time or times, the sum or sums, and the name or names of the trustee or trustees, by whom paid, advanced or made over.

Ans. They never did. This answers the whole question.

Int. 8. State whether or not to your knowledge your mother's will contains this provision, viz: "And in case after the cessation of said income as to my said sons respectively, otherwise than by death as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons respectively would have been entitled under the preceding trusts, in case the forfeiture hereinbefore provided for had not happened;" and if yea, state whether or not the trustees under said will have ever, since the failure of Bailey & Eaton and their said assignment to the complainant, or your individual assignment to the complainant, or your petition in bankruptcy, to your knowledge, exercised or attempted to exercise in behalf of yourself the discretion vested in them by said clause of said will in paying to or applying for your use any part of the income of said trust-estate, as a beneficiary of said estate.

(Objected to.)

Ans. It does contain such clause. They never have.

Int. 9. State whether or not said trustees, subsequent to the date of said assignments, and your petition in bankruptcy, ever, to your
161 knowledge, conferred together with any reference to paying to you, or applying for your use as a beneficiary under your mother's will, any portion of the income of said trust-estate.

(Objected to.)

Ans. They have not conferred for that purpose, to my knowledge.

Int. 10. In your deposition given in this cause at the instance of the complainant, you are asked by the 14th interrogatory as follows: "Did you, in your examination in bankruptcy, in answer to inquiries as to the property you received from the trust estate and applied to your own use and benefit, and as to whether one-third of the income of the estate, devised and bequeathed by your mother's will, had been thus paid, answer, 'I should say generally that it had?'" You answer in the affirmative. Please state whether the answer would correctly apply to the amount of income you received after the advance of $25,000 by the trustees to you at the time you have mentioned, or at whatever time made; and, if it would not apply, why not.

Ans. It would not correctly apply, for my share of the income from

the estate was less after the advancement of $25,000, by amount of interest charged thereon.

Int. 11. In the same deposition you are asked by the 15th interrogatory: "Did you also, in answer to an inquiry as to whether an account had been kept between you as cestui que trust and the trust estate; and, if so, with what have you been credited in that account, answer, 'There is such an account. I have been credited with my share of the income?'" You answer, "I did so answer; but I should have stated that I did so individually, and not by direction of the trustees." Please state on whose motion or suggestion such account was kept and such credit was given, and the object thereof.

Ans. I did it of my own motion, for the purpose of finding out approximately for the other beneficiaries about what amount of income they might expect to receive. Mr. Bailey, the senior trustee, said there was no objection to my doing this for that purpose, but that it was not the final act of the trustees.

Int. 12. State whether or not, in keeping such account of your
162 receipts and disbursements from or on account of the trust estate, you considered the proportion of income which you credited to yourself as thereby in any way settled to be yours by such credit, or by so receiving it, or as income received by you as acting trustee in that respect, and for which you were to account to the trust estate.

(Objected to.)

Ans. I did not so consider it, until it should be adjudicated by the trustees. I considered that I was to account to the trust estate therefor.

Int. 13. State whether or not you, at any time, conversed with the trustees or either of them in relation to this mode of your keeping the estate's accounts; and, if yea, with which of them, and what did such other trustee or trustees say to you as to the same.

Ans. I have already answered this question in answer to the 11th interrogatory. In respect to what took place in regard to the receipt of money by me from the trust estate since the date of my petition in bankruptcy, I refer to Exhibit L, appended to my deposition, taken at the instance of the complainant in this cause, in answer to interrogatory 23.

Int. 14. State how it came to pass to you, to have the active management of the trust estate and to keep the accounts, rather than to the other trustees.

Ans. Mr. Bailey had a great deal of other business of the same kind to attend to, and wanted me to learn and take the practical management of the details. Mr. Ruggles lived in Glocester, about thirteen miles from the city. The three trustees always met together to arrange any business of importance, Mr. Bailey being near by. I advised with him about the details of the management.

Int. 15. State the circumstances under which James Y. Smith commenced and continued his endorsements of the paper of Bailey & Eaton; first, when such endorsements commenced, and at whose request; second, on what assurances of indemnity against loss, and by whom given, to your knowledge.

Ans. I attended generally to the financial affairs, notes, &c., of Bailey
& Eaton. My partner, William M. Bailey, jr., attending to our
163 branch of the business in Boston, where the oils were mixed and principally delivered. I generally took the notes of Bailey & Eaton to Mr. William M. Bailey for his endorsement. Soon after the death of my mother he, Bailey, endorsed such a note, and told me to

take it into the next room to Mr. James Y. Smith, who would also endorse the note. I did so carry it to Gov. Smith, and he did so endorse it. Thereafter I continued so taking notes to Gov. Smith for his endorsement, sometimes first endorsed by Bailey and sometimes not, generally Bailey's name being before Smith's, sometimes afterward. I understood at the time that there was some agreement between Bailey and Smith with regard to such endorsements of Bailey & Eaton's paper. I never knew nor inquired what it was specifically. I never asked said Smith otherwise to endorse Bailey & Eaton's notes than by so carrying them to him for that purpose. He never asked me for nor did I ever offer to him any indemnity, and I never showed to him, in connection with such endorsements, any list of my mother's property. All business men who had any dealings with me or with the notes of Bailey & Eaton knew, because I so stated to them, that any interest of mine in her estate was left by her will in trust, before said Smith made any such endorsements. His said endorsements did not begin until after my mother's death, in August, 1864. They began, I think, within a month after her death.

(Complainant's counsel objects to so much of the last answer as relates to understanding or hearsay.)

When I speak of notes which I carried to William M. Bailey for his endorsements, I refer to the notes of Bailey & Eaton, made about the time of her last sickness and death, and subsequent to her death. Previous to that time all or nearly all of Bailey & Eaton's notes were discounted at the Old National Bank upon a guarantee signed by my mother and William M. Bailey.

Int. 16. State whether or not said James Y. Smith acted as one of the probate appraisers of your mother's estate; and, if yea, annex a copy of the certificate of his appointment as such, and state whether or not you assisted in making out a list of property for the appraisers, and handed such list to said Smith.

164 Ans. He was appointed as such appraiser, and acted as such. I annex a certified copy, marked A, of his appointment, his engagement thereon and the inventory returned, signed by the three appraisers, he being one. He attended principally to that portion of the inventory including bank-stocks, bonds, mortgages, &c. To assist him in drawing up such inventory, I drew up such a list and sat down with him at his desk in his office on two separate occasions, on the last of which he carried out the values concerning which I had asked the opinion of a broker, Henry C. Cranston, to guide Gov. Smith therein. Such inventory is of the personal property alone, and does not contain any list of real estate. He never said a word to me, nor I a word to him, in connection with such list, nor at any other time whatever, prior to our failure, concerning any indemnity or guarantee to him for endorsing for Bailey & Eaton.

Int. 17. State what connection the paper of Bailey & Eaton, endorsed by James Y. Smith, had with the Union Coal and Oil Company, the business relation of said Smith to said company, the part taken by him in advising Bailey & Eaton's connection with said company, the office or offices held by him in said company, the proportion of the paper of Bailey & Eaton endorsed by him made for the accommodation of said company, and whether or not he advised your loaning said paper for the accommodation of said company.

Ans. The larger part of the paper of Bailey & Eaton endorsed by Gov. Smith with William M. Bailey, was in consequence of our mutual connection with the Union Coal and Oil Company. Gov. Smith was

one of the directors, and for a time acting president of the company. He was one of the large stockholders in said company. We also were large stockholders, and also agents for the sale of the company's products. The steps which led to our mutual connection with the company extended over several months, leading finally to the sale consummated. During the whole of said period all the parties, including Gov. Smith, who finally became stockholders, were advised with and directed the course taken by Bailey & Eaton. They always knew that 500 shares of the stock were to be given to Bailey & Eaton. We took par-
165 ticular pains that they should. During the whole period of such endorsement of Bailey & Eaton's paper by Gov. Smith and William M. Bailey, my partner and myself were fully aware of the obligations we were under to them, and advised with them, and acted upon their suggestions with regard to any business of importance undertaken by us. We never acted contrary to their express advice and knowledge in any matter of importance. Although exempt by our contract with the Union Coal and Oil Company from advancing money to the company, yet, upon the complication of the affairs of the said company, acting under the advice and directions of our said endorsers, we did advance money, procured by the discount of our notes, endorsed as aforesaid, and drafts to said company with the other stockholders. From the beginning of our business in 1862, until our connection with our said endorsers as stockholders in the said Union Coal and Oil Company, we had done a fair paying business in selling the products of said company and otherwise. It was the want of success of the Union Coal and Oil Company which brought about the failure of Bailey & Eaton, William M. Bailey, and almost of James Y. Smith himself. Upon the day of our assignment, I heard him say that he did not know but what he would have to make an assignment too.

(Complainant's counsel objects to so much of the last answer as is not responsive to the interrogatory.)

Int. 18. State the connection of said Smith with Bailey & Eaton in the East Providence Land Company, as respects the purchase and payment of the property and their respective interests in the same.

Adjourned to May 5, at 10½ o'clock a. m.

(Witness wishes to add to his answer to interrogatory 9, as follows: At the instance of my brother George, and particularly of Charles F. Eaton, who wished to know what amount of income they were entitled to expect from the estate, the trustees this spring decided me to credit them with one-third of the income each, from the last settlement in January, 1867. Incidentally therewith was considered the question
166 of moneys of the estate applied by myself to my own use. A compensation to the trustees for their services as such was fixed upon, and the directions and advice given by Mr. Bailey, as before stated, were sustained; that is, since the date of my assignment of March 1, 1867, to Charles A. Nichols, in bankruptcy, one-third of the income has been and is to be credited to a new account, called suspense-account. I am charged with such money as I have appropriated to my own use for my own support, and if I have received more than I am entitled to for my services as trustee, I am accountable therefor to the estate.)

Answer to interrogatory 18. During the month of July and early in August, 1864, Burges Point, afterwards the property of the East Providence Land Company, was advertised for sale by William M. Bailey and Arnold Burges, executors of the estate of Tristam Burgess. Mr. Bailey, as one of said executors, called the attention to the property of

James Y. Smith, Richard J. Arnold, and myself, advising us to buy it on joint account, after examination, he feeling convinced of its great value, stating at the same time that, owing to his position as executor, he could have nothing to do with the purchase. Gov. Smith conferred with me on the subject, and went on to Burges Point with me once, if not twice, for the purpose of examination. He and I were both present at the auction sale, early in August. Just before the property was put up by the auctioneer, Gov. Smith called me one side, again expressed his conviction of the value of the property, said that for various reasons he did not wish to bid on it, and asked me to bid on it, to buy it for joint account. I assented, and asked him how I should know when to bid and when to stop bidding. He said he would stand by, and give me directions by winking, which he accordingly did. And thus acting under his direction, Burges Point was knocked down to me for the sum, I think, of $12,200. It was afterwards decided that the deeds should be made to Bailey & Eaton; that James Y. Smith should own one-half, Richard J. Arnold one-quarter, and Bailey & Eaton one-quarter. To pay for the purchase it was decided that Bailey & Eaton should make their note for $12,500, endorsed by James Y. Smith and Richard J. Arnold, this being the note before referred to in Gov. Smith's
167 deposition and cross-examination. At the following January session of the general assembly a petition for a charter was made, and the charter was granted in the following May. Bailey & Eaton then deeded Burges Point to the East Providence Land Company. James Y. Smith, Richard J. Arnold, William M. Bailey and the firm of Bailey & Eaton then subscribed and paid $3,750 each for the stock, and Bailey & Eaton's note for $12,500 was paid. The affairs of the company were afterwards managed by its officers and directors. I acted as treasurer and secretary, and attended to the details; Gov. Smith, Mr. Bailey, and Mr. Arnold when he was here, advising and directing the business of the company.

Int. 19. State generally what were the different kinds of property owned by you in your individual right, March 1, 1867, and which you assigned to the complainant for the benefit of creditors, as by Exhibit B. annexed to the complainant's bill.

Ans. It embraced my undivided one-third part in a certain lot of land situated in North Providence, stock in Manufacturers' National Bank, and other stocks and notes. I refer to said Exhibit B for a further specification of the property.

Int. 20. State the disposition, to your knowledge, by the complainant, as your assignee, made of all or any part of said property.

Ans. My brothers, George B. Ruggles and Charles F. Eaton, agreed to buy all my individual assigned property, and to pay all my individual indebtedness in full, applying the assigned property thereto so far as it was sufficient. I acted as agent of my brothers in carrying out this agreement; Charles A. Nichols, my assignee, agreeing thereto. He deeded the real estate to them, and to save so many transfers, such of my assigned property as was applied to liquidate my individual indebtedness was transferred directly to the purchasers. Then I called upon Mr. William H. Potter, who was my lawyer, and Bailey & Eaton's lawyer in drawing up our assignments, to ask him to draw up a sufficient conveyance from Charles A. Nichols, as my assignee to my said brothers, of all my said assigned individual estate. I found that he had been taken sick, with a sickness from which he has never yet fully recovered, and therefore the said transfer was not effected.

168 Int. 21. State by whose direction, and whether with the knowl-

edge or at the request of said assignee, you called on said Potter for such a conveyance as mentioned in the answer to the aforegoing interrogatory.

Ans. I did it in my capacity as agent for my said brothers. I expected that Mr. Potter would soon be well again and able to attend to it, and therefore waited for him. I do not think I spoke to Charles A. Nichols, assignee, about it, waiting until I could show him said transfer.

Int. 22. What reason had you to expect said assignee would execute such a conveyance to your brothers?

Ans. He had agreed with me to the arrangement above stated, that my brothers George and Charles should pay my individual indebtedness in full, and receive from him all my individual assigned property.

Int. 23. State whether or not the complainant, at the time of your said individual assignment to him, and that of Bailey & Eaton, or ever at any time by virtue of said assignments, or either of them, demanded of you as one of the trustees under your mother's will, or, to your knowledge, of the other trustees, or either of them, any share or interest in the trust estate or property or income thereof devised to you by said will, or which accrued to you on the death of your sister, Anna Grosvenor Eaton.

Ans. He never did.

Int. 24. State whether or not, to your knowledge, your brother, George B. Ruggles, named as one of the trustees in your mother's will, managed her business for her for a considerable time previous to, and up to or near the time of her decease, and has since that time been largely engaged in the farming business in this State, about fifteen miles from your mother's homestead, where you reside, owning and cultivating or grazing some 900 or a thousand acres of land.

Ans. He did. He has. His farms are about eleven miles from the homestead, and about 900 acres in extent.

Int. 25. State whether or not he has taken part with the other trustees in consultations with them in regard to the management of the trust-estate, from time to time, as occasion would seem to require.

169 Ans. He always has, before anything of any importance has been done or decided upon, and has always shown excellent judgment in his advice.

Int. 26. State the basis of your valuation of the real estate belonging to the trust-estate, as given by you in your proceedings in bankruptcy.

Ans. I acted upon the advice of my counsel, and took the taxed value of the same.

Int. 27. State whether or not any improvement has been made in said real estate since your estimate of its value, enhancing its value, and whether real estate has generally risen in value in the different vicinities of this property since your said estimate of its value.

Ans. The trustees have spent large sums in opening and grading streets, platting lots, etc., at Oaklands, North Providence. This, together with the rise in value generally, owing to various causes, has increased considerably the value of the said homestead estate of Oaklands. This applies principally to what has occurred since the making of my said statements. We had begun making said improvements then.

Int. 28. State what per cent. the trust estate receives by a recent valuation and lease thereof, or renewal of lease from the estate on Pine street, mentioned by A. B. Dike in his deposition in this cause, upon his valuation of said estate.

Ans. Said rent was fixed by appraisers last summer at $1,400 a year.

This would be about 3½ per cent. upon the valuation given by Mr. Dike. The rent for the preceding five years had been $950 a year. This rent of $1,400 was fixed last summer by said appraisers for a term of five years.

Int. 29. State whether or not Bailey & Eaton were purchasers of stock at par or otherwise in the Union Coal and Oil Company, and to what amount besides that allowed them for negotiating the purchase of the property, and whether or not your said endorsers, James Y. Smith and William M. Bailey, knew of such purchase of stock at the time, and advised it or rejected it.

Ans. Bailey & Eaton bought $50,000 worth of the stock at the same price as was paid by the other purchasers. They did this with
170 the knowledge and advice of their said endorsers. They never would have bought one share against the advice of their said endorsers.

Int. 30. State whether or not Bailey & Eaton had a written contract with the Union Coal and Oil Company relating to their agency for said company, dated May 15, 1866; and if yea, will you annex a copy of said contract?

Ans. Bailey & Eaton had such a contract with the company, signed on the part of the company by James Y. Smith himself, who was acting president for the company during the absence in Europe of William C. Chapin, the president, on account of poor health. I will annex a copy thereof, marked B.

Int. 31. State whether or not Bailey & Eaton had any other contract or agreement in relation to their commissions or compensation as agents, or received other commission or compensation.

Ans. This contract was for one year. For other years they had other contracts. They never received other compensation than they were entitled to by the contract of each successive year, for their services in selling the products of the company. 500 shares of stock was given to them for their services in bringing about the purchase of the company, as I have before stated, with the knowledge, consent, and advice of all the parties interested. They afterwards divided that given stock with William C. Chapin, at his request, and with the knowledge and advice of our said endorsers, Bailey and Smith, for the like services rendered by the said William C. Chapin, with Bailey Eaton.

Int. 32. State the highest rate of commissions received by Bailey & Eaton, by any contract with the said company, after you became stockholders.

Ans. Under the contract of May 15, 1865, Bailey & Eaton received a commission of six per cent. on pure or mixed oils, and on the contract of May 15, 1866, they received a commission of eight per cent. on pure or mixed oils, and in both cases a commission of five per cent. on paraffine wax and candles. This involved on the part of Bailey & Eaton a guarantee of all sales made by them. It also involved the purchase of a large amount of animal oils, to be used in mixing with the paraffine oils of the company.

171 Int. 33. State whether or not said Union Coal and Oil Company drew drafts on Bailey & Eaton, and which they accepted as provided for in your contracts with said company, and which said company failed to protect at maturity pursuant to said contracts, thereby causing your embarrassment and ultimate failure.

Ans. They did so draw drafts upon Bailey & Eaton, which were accepted by us; upon the maturity of many of which there were not funds of the company in the hands of Bailey & Eaton. In every such case,

according to the contract, the company was to pay for such drafts. But the affairs of the company became complicated and involved, and acting under the specific direction and advice of our said endorsers, Smith and Bailey, we, in common with them and the other large stockholders of the company, paid such drafts, the other large stockholders making advancements to the company. Had we not been so advised to do by Smith and Bailey, who, as before stated, were large stockholders in the company, we should have expected the company to adhere to the terms of its contract with us, as before stated. It was the necessities of the Union Coal and Oil Company that caused our failure.

Int. 34. State the amount of such drafts and acceptances not protected by said company, and which fell on or came back to Bailey & Eaton to pay.

Ans. I will make up such a statement as nearly as I can from the books of Bailey & Eaton, which I will append to my deposition, marked C.

Int. 35. State the respective ages of the members of the firm of Bailey & Eaton at the time of their said business connection with the Union Coal and Oil Company, and how long they had been in business at the commencement of said connection.

Ans. Bailey & Eaton first began selling the products of the Union Coal and Oil Company in 1862. I was then 21 years of age. My partner, William M. Bailey, jr., is one week younger than I am. Bailey & Eaton began business that same year, 1862.

Adjourned to meet at the office of Sumner U. Shearman, at 10 o'clock to-morrow morning.

172 Cross-examination:

The complainant not waiving his objections to the preceding examination, submits the following cross-interrogatories:

Int. 1. (By Mr. ROGERS.) In answer to 6th interrogatory, you say that there was more than one settlement with you by the trustees in relation to your share of the income from your mother's estate as one of the beneficiaries under her will, before your assignment, the last one being January 31, 1867. Please state how many such settlements there were, when made, and append copies of each of such settlement except that of January 31, 1867, which is already appended.

Ans. I think there were about six. I received the income. Spent it to live on. The accounts were settled, and that was the end of it. I regard such a request as foreign to this case, and one which I am not called upon to answer unless directed to do so by the court. I have no other reason for declining to make copies of such settlements, and will produce them if so advised by my counsel. They were made generally at intervals of six months from 1864 to said last settlement, January 31, 1867.

Int. 2. Please state distinctly whether or not you decline to append copies of such settlements.

Ans. Unless so instructed by my counsel or so instructed by the court, I decline.

Int. 3. You say, in answer to the 3d interrogatory, that the trustees under your mother's will advanced $25,000 to enable you to put it into the firm of Bailey & Eaton to advance their business interests. State whether you ever drew out any of said $25,000; if yea, when, how much and for what reason.

Ans. I did at various times, and for various reasons. The amount I cannot state. They are all down on Bailey & Eaton's books, where the assignee will find them.

Int. 4. Please state the various reasons referred to in your answer to the last interrogatory.

Ans. Sometimes I drew money from Bailey & Eaton to pay in
173 part for my expenses of living; sometimes to apply in part or in whole towards purchases made by me, or investments made by me in different enterprises.

Int. 5. Please state whether there are any other reasons; if so, what? (Witness here asks counsel as follows: Please explain your question. I do not understand it.)

You were asked in the 3d cross-interrogatory for the reason of your drawing out a portion of the $25,000 spoken of in that interrogatory, and in answer thereto you have stated you did it for various reasons, and in the 4th interrogatory you were asked to please to state those reasons, and in answer thereto have given three reasons. Please state if there were any other reasons than those you have stated; if yea, please give such other reasons.

Ans. There were no other reasons.

Int. 6. Please state about the amount of the portion of the $25,000 drawn out by you, from time to time, as you have stated.

Ans. I do not carry in my head running book-accounts extending from year to year; therefore cannot answer this question. The books are now in the complainant's hands, and he will find every item entered there.

Int. 7. Cannot you remember the balance, and will you or not swear that you drew out about $9,000 of said $25,000?

Ans. This is not the correct way to put it. At the time of Bailey & Eaton's assignment, I think the balance to my credit was about either $17,000 or $18,000, I have forgotten which. In this running account, as in many other such accounts, as generally kept, I was charged with such money as I drew or received from Bailey & Eaton on the date of such receipt. When the books were made up once or twice a year, as the case might be, I was credited with interest accumulating on the balance of such account during such period, and with my share of the profits in the business. This, of course, would bring my account up again.

Int. 8. Please state what the capital stock of the Union Coal and Oil Company was, into how many shares it was divided, and what was the par value per share.

174 Ans. In 1865 it was $1,000,000. It was divided into 10,000 shares at $100 a share for each. Afterwards the capital stock was $1,400,000, of 14,000 shares at $100 for each. This was in consequence of the actual expenditure of about $400,000 or $500,000 in cash, to increase the capacity of the works or otherwise.

Int. 9. How many shares in said company did Bailey & Eaton own, from time to time, and how did they get them, and when?

Ans. When the purchase was made by the eastern gentleman, William C. Chapin and Bailey & Eaton bought 7,000 shares for $400,000. The stock was immediately thereafter divided with the other parties who have been named; this form of purchase being the one approved of by them generally, so that by purchase, and all at the same price and upon the same terms, William C. Chapin had the largest interest, I think, nearly $200,000. Bailey & Eaton $50,000. William M. Bailey & James Y. Smith $25,000 each, &c. The purchase of $50,000 by Bailey & Eaton gave to Bailey & Eaton their portion of 7,000 shares, viz: one-eighth, 875 shares. Five hundred shares of stock were given to them for their services in securing the purchase and bringing the parties together, serv-

ices extending over many months, leading to many visits to the West of themselves and many of the gentlemen who afterwards purchased. 875 shares and 500 shares make 1,375. When the capital stock was increased from $1,000,000 to $1,400,000, Bailey & Eaton's share of the 4,000 shares of new stock issued was 550 shares. 550 shares and 1,375 shares make 1,925 shares. Afterwards Bailey & Eaton gave William C. Chapin 300 shares of the stock for his like services in securing the purchase, leaving to Bailey & Eaton 675, all of which was done in connection with and under the sanction and direction of said endorsers of Bailey & Eaton, William M. Bailey, and James Y. Smith.

Int. 10. Please state when the 300 shares spoken of in your last answer was given to William C. Chapin, and under what circumstances.

Ans. I think in the spring or summer of 1865. Mr. Chapin main-
175 tained that he had taken personally and placed among his friends more of the purchased stock than he originally intended to, and therefore was entitled to a portion of the 500 shares. His claim was talked over and discussed with the large stockholders, and was settled by giving him 300 shares, with the approval of the other gentleman.

Int. 11. What consideration, if any, did William C. Chapin pay Bailey & Eaton for the 300 shares so transferred to him?

Ans. None.

Int. 12. You have stated that Bailey & Eaton received 500 shares for selling stock to the eastern stockholders. Please state whether or not said 500 shares donated to you was or was not so donated because of your selling all the shares spoken of to the eastern stockholders; if not, state why not.

Ans. The 500 shares, as already stated, were given to us for our services in bringing about the sale and purchase, and for this purpose only.

Int. 13. What purchase? How many shares?

Ans. I refer to the purchase of 7,000, or, more properly speaking, of 7,500 shares, for $400,000, which was made with the knowledge that 500 shares were to be given to Bailey & Eaton of this amount, leaving 7,000 shares to be divided pro rata among the purchasers who paid the $400,000.

Int. 14. Was not the stock taken by William C. Chapin personally and placed among his friends, spoken of by you in answer to the 10th cross-interrogatory, a part of the 7,000 shares, for the sale of which you received a donation of 500 shares?

Ans. Yes. Mr. Chapin was one of the parties for bringing the purchase to whose attention the 500 shares were given to us. As before explained, in consequence of his like services with us, in compliance with his request and the advice of nearly if not of all of the large stockholders, we gave him 300 shares.

Int. 15. Please state whether or not you were examined in bankruptcy before Register Hoppin on April 27, 1869, and subsequent thereto.

Ans. I was.

Int. 16. Please state whether, at your said examination on the 27th of April, you were asked this question: "14th interrogatory. What
176 property have you received from the trust-estate and applied to your own use and benefit?" To which you answered: "The sum that I advanced to the firm, viz, $25,000, which was advanced to me by the trustees from my mother's estate and put into the business. The trustees have paid other bills for me; I cannot give an exact answer how much, but the books will show."

Ans. I was. I did.

Int. 17. Were you not, on said examination, further asked: "15th interrogatory. What amounts per annum have been thus paid?" To which you answered, "I could not tell from memory."

Ans. I was, and I did.

Int. 18. Were you not, on said examination, further asked: "16th interrogatory. Has the income of one-third of the estate been thus paid?" To which you answered, "I should say generally that it had."

Ans. I was. I did make such answer, not meaning thereby that one-third of the income had been paid to me as a beneficiary under the will.

Int. 19. Please state whether the latter part of your last answer, beginning with the words, "not meaning thereby," to the end of said answer, was a part of your answer before the register in bankruptcy to the 16th interrogatory, about which you were inquired of in my 18th cross-question.

Ans. It was not. I did not say it was; and did not intend to have it understood it was.

Int. 20. Please state whether, on said 27th of April, 1869, your examination before the register in bankruptcy was not adjourned on your motion to May 1, 1869, after the 21st interrogatory was put to you, and before it was answered.

Ans. It was, upon the consent of the opposing counsel who put the questions to me, for the purpose of giving me time to make up the statements called for.

Int. 21. Was there any ground for the adjournment appearing of record except your motion?

Ans. No other ground appears upon the record. But I stated verbally at the time, if it is not down, that I must have time to make these statements.

177 Int. 22. Upon May 1, 1869, when your examination was resumed, did you make this statement before the register: "I wish to add to my answer to the 14th interrogatory, the bills which I stated were paid for me by the trustees were paid prior to my petition in bankruptcy. I call it a payment by the trustees, because I had authority from the trustees to draw checks. When so paid I charged myself as debtor to so much cash on the estate books, as received from my portion of the income."

Ans. I did make such statement.

Int. 23. Please state whether you proposed, then, any modifications of your answers to the 15th and 16th interrogatories before said register.

Ans. I do not find any on record, and do not suppose I did.

Int. 24. Were you not on the same day, viz, May 1, 1869, in your examination before the register in bankruptcy, asked: "Interogatory 29th. Is there an account kept between you, as cestui que trust, and the trust-estate; and if so, with what have you been credited in that account?" to which you answered, "There is such an account. I have been credited with my share of the income."

Ans. There was such a question put to me, to which I made such an answer. I meant that since the last settlement by the trustees, January 1, 1867, I personally had made such rough division, not that it was the act of the trustees. It had not been determined by them then, concerning sundry entries necessary to be made after their examination and decision thereupon, in order to make up the income-account correctly.

Int. 25. Please state whether you did, on the said 1st of May, before said register, in answer to the 21st interrogatory, put in such examina-

tion, which interrogatory was propounded on the 27th of April, 1869, and which was in these words: "21st interrogatory. Will you furnish in writing a statement of the money or other property received by you or applied by the trustees, or any of them, out of said trust-property for your use or benefit, giving the amount and date of such appropriation," make the following answer: "I supposed the register had taken down an answer from me assenting to the request to furnish such
178 statement; the interrogatory not specifying from what time such statement was desired, I have prepared and annex a statement from the failure of Bailey & Eaton, March 1, 1867, to the date of my petition in bankruptcy. Since the date of my petition in bankruptcy I have received no payment or money from the trustees, or any of them, for my individual use as a beneficiary of the trust-estate. I have had the principal charge of said estate as one of the trustees, and I have used the moneys of said estate for the improvement of the same. What I have expended upon myself I have charged myself with as owing to the estate, and I am accountable to the estate for the same. The trustees are now developing and improving the estate, and it occupies most of my time and attention. My answer to this interrogatory is contained in my statement, Exhibit G."

Ans. I did.

Int. 26. Will you please append to this, your deposition, a copy of Exhibit G, referred to in your examinations before the register in bankruptcy, and please state to what years said exhibit applies, and is said Exhibit G a correct statement?

Ans. I will. That statement, or Exhibit G, is, I presume, from March, 1867, to December, 1868. On the copy now before me, the year 1867 is not given, probably through a clerical error in copying it, as this is not the original. It is a correct statement of the account, as kept by me personally, not as afterwards decided to be made up by the trustees.

Int. 27. Please state whether, on said 1st of May, 1869, in your examination before the register, you were asked: "Interrogatory 22. Please annex a further statement of moneys received by you or expended by the trustees, or any of them, out of the trust-estate in your behalf or for your use and benefit, from the origin of the trust to the present time;" to which you answered, "I will;" and were you on the same day further asked: "Interrogatory 30. Please produce a copy of the credit side of the account kept with you as such beneficiary," to which you answered, "I will;" and at the adjournment of your examination in bankruptcy, on June 5, 1869, annex to your examination papers marked H, in answer to interrogatories 22 and 30, and is it the same Ex-
179 hibit H that is appended to your deposition in this cause, taken at the instance of the complainant, and is it a correct account?

Ans. I was asked such questions, and did make such answers and annex such Exhibit H. It is the same Exhibit H that is annexed to my deposition taken at the instance of the complainant. It is a correct copy of the account kept by me personally; not of the account made up by the trustees.

Int. 28. Has any written authority ever been executed by the trustees, or any of their number; if yea, to whom, and what were such authorities?

Ans. Written authority has been given by the three trustees to two of their number, William M. Bailey and Amasa M. Eaton, at different times, authorizing them, sometimes one, sometimes the other, and sometimes both, to draw checks for the estate upon its funds deposited in the bank.

Int. 29. Please append copies of said authorities, if copies of the same do not appear in the depositions in this cause; if such copies do appear, please refer to them so that they can be identified.

Ans. I refer to the copies annexed to the deposition of William W. Hoppin in this cause, marked F and I, 1, 2, 3, 4.

Int. 30. Please state who kept the books and accounts relating to Mrs. Sarah B. Eaton's estate since January 1, 1867.

Ans. I have when here. During my absence in Europe they were kept by William M. Bailey, jr.

Int. 31. Do you now keep them?

Ans. I keep a record of occurrences from day to day, and afterwards William M. Bailey, jr. makes them up, as directed by the trustees, after they decide how the record I make of my every-day occurrences shall be treated.

Int. 32. When did you go to Europe, and when did you return?

Ans. October, 1867. I returned March or April, 1868.

Int. 33. Please state whether, in your examination before the register in bankruptcy on the 27th of April, 1869, you were asked as follows: "17th interrogatory. Can you not recollect about the amount thus paid the last year, or two years, or three years," to which you answered, "No, sir, I cannot; it varied a good deal. When I went to Europe the trustees paid my expenses. I went to Europe in October, 1867, and returned in April, 1868."

Ans. I was asked such question, and did make such answer. When I said the trustees paid my expenses, I did not mean that they paid them as a beneficiary under the will. No settlement had been made of what I was entitled to for my services.

(Complainant objects to so much of said answer as is not responsive to his question.)

Int. 34. Please state what your answer to the 17th interrogatory was in your examination before the register.

Ans. It has just been recited by you in the 33d interrogatory, viz, No, sir, I cannot; it varied a good deal. When I went to Europe the trustees paid my expenses. I went to Europe in October, 1867, and returned in April, 1868.

Int. 35. Please state how you received remittances during your said visit in Europe.

Ans. I had two letters of credit upon Duncan, Sherman & Co., from whose agents in the various cities I received such sums thereon as I needed from time to time.

Int. 36. For how much were these letters of credit?

Ans. For one hundred pounds each.

Int. 37. Please state if you mean that the letters of credit for one hundred pounds each, was the amount that you could draw against in Europe of Duncan, Sherman & Co.'s agents; if yea, please state what was the equivalent in dollars and cents required to purchase such letters of credit.

Ans. It was. Such letters of credit are not bought, but as I needed the money from time to time in different cities, in sums generally of ten pounds, it was paid to me by Duncan, Sherman & Co.'s agent in such city, and endorsed on the letter of credit. These bankers collected all of such sums from Duncan, Sherman & Co. here, and they were then paid and charged to me personally, by said William M. Bailey, jr. The equivalent amount in currency at the then rate of exchange was about $1,400.

Int. 38. Please state what balance there was to your credit on the

books of Bailey & Eaton, March 1, 1867, being the date of your assignment.

181 Ans. Upon the examination of the ledger of Bailey & Eaton, now brought in by the complainant, I find the balance to my credit to have been $16,257.28.

Int. 39. Please state if you were credited with interest on the books of Bailey & Eaton on the amount put into the concern by you; if yea, at what rate?

Ans. I was so credited with interest, from time to time, as the accounts were made up, in the same manner as any other creditor would have been. I think the rate was established by ascertaining from the books at each settlement the average rate paid by us for money hired during each of such periods. This was considered the most equitable way for all concerned.

Int. 40. Please state whether you were credited in this same account on Bailey & Eaton's books, with your share of the profits of the concern.

Ans. I think I was.

Int. 41. Please state what balance there was to your credit on the books of Bailey & Eaton, January 1, 1866.

Ans. $25,353.40.

Int. 42. Please state if the profits and interest were credited to you on that account, subsequent to January 1, 1866.

Ans. I presume they were, but could answer more specifically upon examination of the day-books, which are not produced here by the complainant, who has them in his possession.

Int. 43. Please look at the book now produced, and state whether it is a day-book of Bailey & Eaton's; if yea, please look at the same, and answer the last question as specifically as possible.

Ans. It is. Interest was credited to me after that date. Profit and loss account appears credited, and I debited on Bailey & Eaton's day-book, which I now have before me, on June 30, 1866, and December 31, 1866, showing an apparent loss in the business. These settlements did not include a settlement with the Union Coal and Oil Company on their contract, which had not yet expired, I think.

Int. 44. Please state what is the amount of profit and loss that went to your debit, and also your credit, subsequent to January 1, 1866.

182 Ans. The only entries I find on the books of Bailey & Eaton, Providence, now before me, are June 30, 1866, Amasa M. Eaton debtor to profit and loss, for one-half the amount charged to profit and loss from January 1, 1866, to date, $977.76, and December 31, 1866, Amasa M. Eaton, debtor to profit and loss, for his one-half of profit and loss account, $725.48.

Int. 45. Did you state this was exclusive of the commissions received from sales of products of the Union Coal and Oil Company?

Ans. I think this includes the commissions during the time embraced, but cannot be positive, without recourse to the contract with the Union Coal and Oil Company, whether there was any guarantee against loss during the period now under mention. I find the following clause in the contract of May 15, 1866, between the Union Coal and Oil Company, of the first part, and Bailey & Eaton, of the second part, "that if the commissions paid the party of the second part by the party of the first part, from July 2, 1866, June 30, 1867, (both inclusive,) do not amount to ($6,000) more than the expense and interest above assumed by the party of the second part, the party of the first part shall then

make good to the party of the second part such sum over and above such expenses and interest assumed."

Int. 46. Please state whether any profits were credited to you on any of the books of Bailey & Eaton, subsequent to January 1, 1866, in your individual account.

Ans. I think not, if none were made. I have before me only the books of Bailey & Eaton, Providence. They had other books in Boston, New York, and Philadelphia.

Int. 47. Please state at what rate interest was allowed on your individual account, and what was the amount of interest credited to you subsequent to January 1, 1866.

Ans. Interest was credited on my account at the same rate as was paid by Bailey & Eaton for money hired by them. The entries are, June 30, 1866, interest account debtor to Amasa M. Eaton for balance interest on his account to date, $999.26, and December 31, 1866, interest account debtor to Amasa M. Eaton for balance interest on his account, to date, inclusive, $861.18.

183 Int. 48. Please state whether accounts with the other beneficiaries under your mother's will were kept on the books of the trust estate.

Ans. They were.

Int. 49. Please state what books of that estate were kept. Please enumerate them, and all books pertaining or relating to that estate.

Ans. The requisite books for keeping such accounts, journal-day-book, ledger, check-book, stock-book, rent-book, deed-book, dividend-book, bank-book.

Int. 50. Please state if there were more than one of any of the several books enumerated; and if so, of which, and how many?

Ans. There has been more than one of many of these books, as occasion has required in keeping them. Probably there has been more than one of all except the stock-book, rent-book, and deed-book, which are not much used. I cannot remember the number.

Int. 51. How many journals are there?

Ans. There are two journal-day-books.

Int. 52. How many ledgers?

Ans. Two.

Int. 53. Please produce the journal-day-books and ledgers for our inspection.

Ans. I shall not do so unless advised by counsel or directed by court. I have furnished freely, in my examination in bankruptcy and in this case, copies of all accounts called for relative to myself, and neither I nor the trustees have anything to conceal. But the interests of other parties may be affected in various ways by such production of the estate's books, and therefore I decline to produce them, except as above advised or directed. When it is decided by the courts that the complainant has any right or interest in the estate of Sarah B. Eaton, I will furnish him with anything he may then have a right to.

Int. 54. Please state whether the answers made by you to the questions propounded to you in your examination in bankruptcy be-
184 fore the Hon. William W. Hoppin, register, were true, and also whether the exhibits thereto were correct transcripts.

Ans. They were true, and the transcripts were correct in so far as any cause is true until the other side is presented. I was examined only by the complainant, and was not examined by my own counsel in reply.

Int. 55. Please append to this deposition a full copy of your said ex-

amination in bankruptcy before the said register, and also of all the exhibits thereto that are now appended to this your deposition, or to the pleadings in this cause. I mean a full copy of questions and answers, and also of such exhibits as are not appended as aforesaid.

Ans. I will.

Direct examination resumed:

Int. 1. In answer to the 18th cross-interrogatory you say: "I did make such answers, not meaning thereby that one-third of the income had been paid to me as a beneficiary under the will." Please state in what sense you use the word paid where referred to or quoted as used by you, as well in the 16th and 17th cross-interrogatories as in said 18th, and explain your meaning when you say, "not meaning thereby that one-third of the income had been paid to me as a beneficiary under the will."

Ans. By paid I meant taken or used or applied by me personally, from the funds of the estate, whether income or trust-estate. I didn't mean that any sum whatever had been paid, set over, or appropriated to or for me by the trustees of the estate as a beneficiary of the estate, since the last settlement, before spoken of, made by the trustees January 31, 1867.

Int. 2. In the 22d cross-interrogatory you are asked as follows: "Upon May 1, 1869, when your examination was resumed, did you make this statement before the register: "The bills which I stated were paid for me by the trustees were paid prior to my petition in bankruptcy. I call it a payment by the trustees, because I had authority from the trustees to draw checks. When so paid I charged myself as debtor to so much on the estate's books, as received from my portion of
185 the income." Please state what authority you had from your associate trustees, or either of them, at any time after the settlement you have mentioned of January 31, 1867, to apply to your own personal use any portion of the income of the trust-estate, or to charge to yourself as received therefrom any portion of the moneys which you were authorized to draw on the checks to which you have referred.

Ans. None whatever. I had no such authority from my associate trustees, or either of them.

Int. 3. In your 3d cross-interrogatory you are asked if you ever drew out any of said $25,000, and you answer: "I did at various times and for various reasons," and in answer to the 4th cross-interrogatory you say: "Sometimes I drew from Bailey & Eaton to pay in part for my expenses of living, sometimes to apply in part or in whole for purchases or investments made by me in different enterprises." Please state whether you so drew from Bailey & Eaton to diminish said capital of $25,000 you invested in that firm, or drew from that firm generally, as your partner, Bailey, might have drawn.

Ans. I drew from that firm generally, as my partner, Bailey, was also in the habit of doing.

Int. 4. In your individual assignment of March 1, 1867, to the complainant, annexed to his bill as Exhibit B, there occurs, after the specifications of various kinds of property, this general clause, "also hereby assigning and conveying all estate and property of every kind belonging to me individually, wherever the same may be situated, except such property as is exempt from attachment by law." Please state what other property you then had belonging to you individually, other than that which you had already specified in said assignment.

(Objected to by the complainant's counsel.)

Ans. I had none except a few personal effects, meaning such as watch, wearing-apparel, and the like.

Int. 5. At the time of the execution by you of your said assignment of March 1, 1867, what advice had you by your counsel as to what property passed by said assignment?

(Objected to by complainant's counsel as incompetent, and also as irrelevant.)

186 Ans. I was advised that I assigned by that assignment only all estates and property of every kind belonging to me individually, as specifically mentioned therein, not including any interest in my mother's estate. That counsel was William H. Potter.

Int. 6. State whether or not you have been examined by your own counsel in explanation of your answers to your examination before the register in bankruptcy, and whether or not your petition for discharge in bankruptcy has yet been tried.

(Objected to as incompetent and irrelevant.)

Ans. I have not been so examined by my own counsel, and my petition for discharge has not been tried.

AMASA M. EATON.

A.

Appraisers' warrant.

THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS,
Providence, sc.:

By the court of probate of the town of North Providence, in the county of Providence and State aforesaid, exercising probate jurisdiction.
[L. S.]

To James Y. Smith, William M. Bailey, jr., Brown Burlingame, greeting:

You are hereby appointed and empowered, as three suitable persons, to take an inventory of all the goods, chattels, rights, and credits whereof Sarah B. Eaton, late of said town of North Providence, deceased, died, seized, and possessed; and, according to your best skill and judgment, truly and justly to appraise the same, as soon as may be, in dollars and cents, according to the present value thereof, being first sworn or affirmed to the faithful discharge of that trust; and when you shall have completed said inventory, as aforesaid, you are to return the same, together with this warrant, with your doings thereon, to the office of the clerk of said court, or to seal up and deliver the same to
187 William M. Bailey, George B. Ruggles, and Amasa M. Eaton, executors of the said deceased, who are hereby accordingly directed so to return and exhibit the same, on oath, to said court of probate of the town of North Providence, within three months from the time of taking upon them that trust.

In testimony whereof we have caused the seal of said court to be hereunto affixed, this fourth day of October, A. D. 1864.

Signed and sealed by order and in behalf of said court.

ROYAL LEE,
Probate Clerk.

GREENVILLE, *this seventeenth day of October, A. D.* 1864.

STATE OF RHODE ISLAND, *sc:*

Then the above-named Brown Burlingame personally appeared and

made oath that he would faithfully and impartially discharge the trust reposed in him by the foregoing warrant.

Before me,

ASA WINSOR,
Public Notary.

[5c't int.-rev. stamp.]

STATE OF RHODE ISLAND,
City of Providence, sc., 17th October, 1864.

There and then the above-named James Y. Smith and William M. Bailey, jr., personally appeared and made oath that they would faithfully and impartially discharge the trust reposed in them by the foregoing warrant.

Before me,

J. G. MARKLAND,
Justice of the Peace.

[5 c't int.-rev. stamp.]

AN INVENTORY

Of all the goods, chattels, rights, and credits which were of Sarah B. Eaton, of the town of North Providence and State of Rhode Island, deceased, shown and set forth to us, the undersigned, by the executors of the last will and testament of said deceased, taken and appraised by us, this 23d day of December, A. D. 1864, by virtue of the annexed warrant, delivered to us by the court of probate of the town of North Providence.

188 *Stock, farming-utensils, etc., on Oakland farm, North Providence.*

HOUSE BARN.

Barouche and harness	$500 00
1 pair small black horses	350 00
Horse "Jeff Davis"	50 00
Black horse "John"	50 00
Small gray mare	100 00
Old red wagon, (open)	20 00
" double carriage harness	20 00
" express "	10 00
Stable-utensils, &c	10 00
3½ tons hay	100 00
29 old hay caps	10 00
" " "	5 00
2 side-saddles	10 00
Old carriage	35 00
2 carriage-blankets	12 00
Old cart-harness	5 00

FARM BARN.

Hay cutter, (out of repair)	1 50
16½ tons hay on north side, at an average price of $20	328 00
10 tons good hay, @ $30	300 00
Old cart-harness	8 00
Ox-chain	1 50

35 barrels beans, (part in crib,) @ $2.50	87 50
5 hay-forks	2 00
Stable-utensils	2 50
Buffalo cow	45 00
Old black cow	35 00

NEW BARN.

Covered sleigh	150 00
Old "	10 00
2 potato-hooks, @ 62½c	1 25
Spade and lot of shovels	1 25
11 old hay-rakes, @ 25c	2 75
Garden-roller	10 00
189 Cradle, &c	$1 50
4 scythes and sticks, and lots of old ones	6 00
Old horse-cart	20 00
Low-gear for oxen	40 00

CORN-CRIB.

Grindstone	5 00
2 wheelbarrows and parts of old ones	3 00
Old corn-sheller	5 00

SHED.

2 old plows, at $4	8 00
Small horse-plow	3 00
Cultivator	1 50
Horse-hoe	8 00
15 cord oak-wood, near farm house, some chestnut in it	90 00
4 cord hard wood near gate, @ $5	20 00
4 " " " better quality, @ $6	24 00
5½ " cherry, @ $3	16 50

HOT-HOUSE.

2 iron rakes	75
Old shovel	30
Spade	75
Edging knife	75
2 hoes	50
2 grass-knives	50
A lot of pots estimated at	25 00
Pig, $25.00. Poultry, $30.00	55 00

HOUSE-CELLAR.

1,100 gallons old cider, @ 15 cents	165 00
240 " vinegar, @ 20 cents	48 00
30 casks	25 00

SMALL BARN.

6 tons old straw, @ $15	90 00

Residence.

S. W. PARLOR.

	Marble vase with doves	25 00
	Alabaster table	25 00
190	Small alabaster vase	$10 00
	" " "	10 00
	" marble "	10 00
	Large alabaster "	20 00
	" " Venus "	10 00
	Terra cotta pitcher	2 00
	Pair alabaster birds	1 00
	White and red glass vase	5 00
	Porcelain vase	2 00
	Terra cotta images	3 00
	Alabaster basket	1 00
	White and red glass "pear."	1 00
	Terra cotta basket	1 00
	Carved oak box	3 00
	" " cabinet	50 00
	3 China dishes	5 00
	Plaster image, "St. Bernard dog"	50
	Pair plaster hounds	1 00
	Tea-sett of China, consisting of tea-pot, pitcher, 2 cups and saucers, sugar-bowl and water	5 00
	Blue-glass pitcher	50
	China "	1 00
	Boat	1 00
	Swiss chalets	50
	Picture, "2 Peaches"	5 00
	Print, "Jolly Flat-Boatman"	1 00
	Engraving, "a Sibyl"	3 00
	Chinese shoes	1 00
	Terra cotta vase	2 00
	Oval frame	1 00
	Alabaster basket	2 00
	Bronze image	5 00
	Blue and white glass vase	2 00
	Green " " " bottle	50
	Red-glass cup	1 00
	Swiss salad-knife and fork	1 00
	2 candelabra	15 00
	2 large red and white glass vases	10 00
191	1 pair candlesticks	$2 00
	3 papier maché waiters	3 00
	4 japanned waiters	4 00
	Side table, black-marble top	25 00
	Sorrento table	10 00
	Carved oak sofa and cushion	25 00
	Gothic arm-chair	10 00
	Blue tete-a-tete	15 00
	Carved oak arm-chair	15 00
	" " "	15 00
	" " chair	10 00
	" " "	10 00
	" " " small	15 00

PICTURES AND FRAMES.

"Sorrento," (without frame)		50 00
"Naples," " "		50 00
"Cascade"		10 00
"Music"		10 00
"Caught peeping"		10 00
"Mountain Gorge and Stream"		20 00
"Old Mill," (in wood)		10 00
2 country scenes		10 00
5 pair lace curtains, @ $10		50 00
Antique lace cover		25 00
Straw carpet		10 00
Statue, (Charles)		150 00
" (Anna)		150 00

FRONT ENTRY.

Chandelier		10 00
Sorrento chair		1 00
Pair "John Jacob Astor" chair		10 00
2 mahogany arm-chairs		10 00
" table		10 00
Portrait Mr. Ruggles		10 00
2 alabaster vases		5 00
Straw carpet		15 00
2 jute mats, $1.00, $2.00		3 00
192 Fan		$1 00
Guitar and case		3 00
Polishing brushes		1 00
Iron chair and sofa		5 00

S.-E. PARLOR.

Piano and stool		750 00
Rosewood work-table		10 00
White-marble-top table		20 00
Carved oak stand		5 00
Rosewood sofa, "Louis XIV"		20 00
" tete-a-tete		15 00
4 " chairs, @ $5.00		20 00
1 " "		5 00
1 " "		5 00
1 " arm-chair		10 00
5 sets lace curtains, @ $10.00		50 00
Pitcher, "Girl at Spring"		1 00
Picture, "Sheep"		2 00
Candelabra		5 00
2 large glass red and white vases		20 00
Sorrento writing-desk		5 00
" box		1 00
2 red-glass gilt vases		4 00
Red glass-cup		1 00
Blue " gilt, pear and saucer		1 00
Brown " perfume-bottle		1 00
Blue " " "		1 00
Sorrento card-case		1 00

	Lamp	10 00
	Bust and base, (George)	50 00
	" " (Mrs. Eaton)	50 00
	Blue velvet silver-laced table-cover	10 00
	3 photographs	1 00
	Painting, (water-colors,) "Colosseum"	5 00
	" " " "St. Peter's"	5 00
	Painted card-case	2 00

OLD EAST PARLOR.

	Mirror, $10.00; mahogany table, $10.00	20 00
193	Fruit-piece	$10 00
	Frame certificate of membership	2 00
	3 chimney candelabras	10 00
	2 blue and gilt glass vases	2 00
	Rosewood stand	2 00
	Picture of dogs, "Dash and Flora"	3 00
	Old-fashioned arm-chair	10 00
	6 old mahogany "	12 00
	Rocking "	5 00
	Bronze inkstand, "Quince"	2 00
	Sand-box	10
	Red table-cloth	1 00
	Oak-table	15 00

CONSERVATORY.

	4 linen curtains, a $2.00	8 00
	Ivy plant	1 00
	3 flower-stands	5 00

PARLOR-CLOSET.

	Blue porcelain set, (57 pieces)	4 00
	Old blue and gilt china set, (249 pieces)	40 00
	6 porcelain tea-cups	1 00
	Pitcher, 10 cents; porcelain coffee-pot, 25 cents	35
	Set white and gilt china, (75 pieces)	7 00
	2 white fruit-dishes	25
	4 platters	1 00
	2 mugs	10
	2 china plates	2 00
	Set willow-ware china, (36 pieces)	2 00
	Terra-cotta coffee-pot	1 00
	Set white and gilt china, French, (24 pieces)	2 00
	215 pieces cut-glass	30 00
	2 mugs, 25; 3 white plates, 30	55
	2 waiters, 50; demijohn, 25	75
	6 cut-glass decanters	5 00
	24 black glass bottles	1 00
	30 white " "	1 50
	Tin pail, 10; 2 bowls, 50; tin pan, 10	70
	6 demijohns	1 50
194	Box ginger, 50; jar ginger, 50	$1 00
	Tea-caddy	50

Box paraffine candles	1 00
Boxes, &c., 50 cents; 12 table-mats, $1.00	1 50
33 pieces linen	3 00
Bread-tray and brush	25
Cheese-tray	25
12 linen table-cloths	12 00
8 dozen linen napkins	8 00
10 roller towels	2 50
76 linen towels	15 00
24 linen napkins	2 00
Chamois-skin	20
Tin coffee-pot	25
12 books of music	3 00
4 shades	20
12 pieces of old linen	1 00
235 ounces of silver ware	235 00
Silver-chest	25

OLD WEST PARLOR LIBRARY.

6 library chairs	15 00
2 old-fashioned arm-chairs	6 00
Rocking-chairs	1 00
Sofa	20 00
Library table	10 00
Small table	1 00
2 black-walnut book-cases	100 00
Library, consisting of books, for list of which see schedule	600 00
3 candelabra	10 00
2 marble candlesticks	1 00
2 crimson and white gilt glass vases	3 00
Pair brass andirons and tongs	3 00
Picture, (portrait of Mrs. Eaton)	25 00
Picture, (temple of Sibyl Turli)	1 00
Picture, (landscape)	1 00
Daguerreotype, (G. B. R.)	50
5 pieces of wrought linen	50
Thermometer	10
195 Hammers and screw-drivers	$1 00
2 camphene lamps	25
10 vases	1 50
Picture of Charles and Alice	1 00
4 candlesticks	50
2 medallions	1 00
1 box	25
Letter-holder	10
Perfume-bottle	50

OLD FRONT ENTRY.

Oil-cloth carpet	2 00
Hat-stand	3 00
Mahogany table	5 00
Table-cloth	1 00
2 mats	1 00
Lantern	2 00
3 portraits	30 00

SOTHWEST BED-CHAMBER.

Carpet	10 00
Bed and bedding	25 00
Bureau	10 00
Mirror	5 00
2 kerosene lamps	1 00
6 chairs	6 00
Commode	10 00
Washstand	5 00
Picture, (bull's head)	3 00
Picture	10
Lace curtains	12 00
Rug	25
Arm-chair	4 00
Towel	20
Washstand	4 00
Towel rack	50
Washstand	1 00
Mirror	5 00
Chamber set crockery	2 00
Mirror	1 00

196 CLOSET.

Cotton batting	$1 00
18 baskets	3 00
Small camphor trunk	1 00
Cotton and linen cloth	4 00
2 dozen sheets	10 00
Soap	3 00
Wardrobe, (personal)	75 00

SOUTHEAST BED-CHAMBER.

Cottage furniture, consisting of bed, bureau, washstand, 5 chairs.	
Commode	5 00
5 chairs	2 00
Mahogany table	5 00
4 curtains	8 00
Large trunk	3 00
Mirror	5 00
Table	2 00
5 pictures	5 00
Straw carpet	5 00

CLOSET.

2 mattresses	10 00

UPPER FRONT HALL.

Kerosene lamp	1 00
Carpet	2 00
Hair-cloth sofa	4 00

Sofa	1 00
2 chairs	2 00
Table	1 00
Rug	50

WEST BED-CHAMBER, OVER LIBRARY.

Carpet	10 00
Black walnut bedstead and bedding	50 00
Washstand	50
Bureau	5 00
Mirror	5 00
Hand mirror	50
197 Mahogany washstand	$3 00
Clock	2 00
Bureau	7 00
3 chairs	1 50
Wardrobe	3 00
6 towels	1 25

OLD DINING ROOM.

Sideboard	15 00
7 chairs	2 50
Table	50
Mirror, $2.00; tea caddy, $1.00	3 00
2 pitchers, $2.00; clock, $1.00	3 00
2 bells, $1.00; pitcher, 10	1 10
100 pieces mixed old crockery	5 00
38 pieces blue china ware	3 00
3 dozen jelly glasses	2 00
4 tumblers, 25; 28 bottles, 50	75
Demijohn, 25; 75 pieces cutlery, $3.00	3 25
4 towels, 50; 9 napkins, 50	1 00
Table cloth, $1.00; 5 rings, 25	1 25
15 old towels, $1.00; poker and shovel, 25	1 25

BATHING ROOM.

Chair, 25; box, 50	75
Old Bureau, $5.00; 28 towels, $3.00	8 00
1 dozen sheets, $3.00; 2 dozen pillow cases, $2.00	5 00
3 towels	50

NORTHEAST BEDROOM.

Carpet, $4.00; carpet (straw,) $1.00	5 00
Beadstead, $10.00; bureau, $10.00	20 00
Stand, $2.00; 3 chairs, 50	2 50
Old brooms, etc	50

NURSERY.

Sofa, $4.00; 6 chairs, $3.00	7 00
Bureau, $4,00; table, $5.00	9 00
Pine table, 50; 2 chairs, 50	1 00

	Mirror, $2.00; stool, 10	2 10
	9 lamps, $3.50; table cloth, 25	3 75
198	2 baskets, 10; carriage robe, $10.00	10 10
	2 candlesticks, 25; 3 pans, 30	55

NORTHWEST DARK BEDROOM.

	Bed and bedding	2 00
	Bureau, $1.50; 2 pictures, $1.00	2 50
	2 chairs, 50; tub, 25	75
	Cannikin	10

STORE-ROOM.

	18 pieces of old tin ware	50
	49 pans	4 00
	46 pieces of old ware	2 00
	Sieve, 10; steelyards, 20	30
	Spring balance	50
	Various articles	1 50
	36 pieces crockery	3 60
	7 cannikins	1 00
	35 bottles, 75; 8 pieces tin and iron ware, $1.00	1 75
	89 preserve glasses and jars	5 00
	Tub, 25; 3 bags, 50	75
	Sieve, 25; Chair, 5	30
	Tub, 25; table, 25	50

CELLAR.

	Truck, $3.00; cupboard, 50	3 50
	Coal, $120.00; shovel, 25	120 25
	Ashes sifter, 50; 3 wood saws, $1.50	2 00
	Barrel, $1.50; barrel, 70; barrel, 70	2 90
	About 200 bottles	6 00
	Peck measure	10

KITCHEN.

	50 pieces old crockery	1 50
	17 pieces of old tin ware	1 00
	4 chairs	1 00
	2 tables, $1.00; stove, $7.00	8 00
	Clock, 50; 6 flat-irons, 50	1 00
	80 black glass bottles	1 60
	3 pails, 30; 2 brass kettles, 50	80
	2 washboards	20
	3 earthen pans	30
199	33 earthen pans	3 30
	2 tin pans	10
	Chest, 50; chopping tray, 20	70
	Clothes-rack, 25; grindstone, 25	50
	Jar, 10; jar, 5	15
	12 jars, $1.00; chopping-tray, 10	1 10
	23 bottles, 69; churn, 25	94
	Table	25

EAST GARRET CHAMBER.

Bedstead and bedding	2 00
Bureau, 50; 2 chairs, 25	75
Cricket, 10; looking-glass, 17	27
3 fenders, $1.25; 5 waiters, $1.00	2 25
Tin kitchen, 50; 3 cans, 50	1 00

EAST GARRET.

Closet, $1.00; contents, $2.00	3 00
10 trunks, $10.00; 14 baskets, $1.75	11 75
Straw matting	3 00
Tray and stand	1 00
Plate warmer, 50; 4 crickets, 40	90
2 warming-pans, $1.00; reel, 50	1 50
2 pictures, 50; blackboard, 10	60

NORTH GARRET CHAMBER.

Bedstead, bedding, bureau, washstand, chair, glass, bowl, pitcher, etc	3 00

WEST GARRET CHAMBER.

Cotatge set, bedstead, bedding, bureau, washstand, 2 chairs, stand	15 00
Chair, 10; 3 chests, $1.00	1 10
5 chairs, $1.00; 5 baskets, $1.00	2 00
Cradle	25

OLD WEST STUDY ROOM.

Desk, $5.00; carpet, 50	5 50
2 chairs, 50; 2 picture frames, $1.00	1 50
Brace pistols	5 00

200 EAST CHAMBER.

Bedstead and bedding	25 00
Bureau	20 00
6 chairs, $12.00; carpet, $10,00	22 00
Washstand, bowl, etc	4 00
2 stands, $3.00; andirons and fenders, $2.00	5 00
4 pictures, $6.00; 2 cologne bottles, $1.00	7 00
Bedstead and bedding	10 00
Dressing-table, $5.00; stand, $1.00	6 00
Chair, $2.00; glass vase, 50	2 50
Porcelain vase, 25; carpet, $1.00	1 25

WINE-CELLAR.

Bottled wine and bottles	100 00
Hogshead of molasses	50 00
2 hogsheads	3 00
15 gallons currant wine	10 00

2 demijohns 67

OTHER ARTICLES.

Bedstead and bedding	25 00
Old carpet	2 00
Small table, $2.00; wooden safe, $1.00	3 00

Bank-stock, notes, mortgages, etc.

173	shares	American Bank, @	$50..	$8,650 00
11	"	American Insurance Co	50..	550 00
25	"	Arcade Bank	25..	625 00
42	"	Atlas " Boston	100..	4,200 00
153	"	Blackstone Canal Bank	25..	3,825 00
25	"	Boston and Providence R. R. Co	125..	3,125 00
80	"	Boston and Worcester R. R. Co	125..	10,000 00
4	"	Boylston Bank, Boston	100..	400 00
40	"	City " "	100..	4,000 00
25	"	Bank of Commerce	100..	2,500 00
115	"	Commercial Bank	50..	5,750 00
3	"	Eagle "	50..	150 00
40	"	Equitable Fire and Marine Ins. Co	50..	2,000 00
63	"	Exchange Bank	50..	3,150 00
50	"	" " Boston	100..	5,000 00
201				
50	shares	Fitchburg Railroad Company	$110..	$5,500 00
20	"	Gaspee Fire and Marine Ins. Co	50..	1,000 00
48	"	Globe Bank	50..	2,400 00
13	"	" " Boston	100..	1,300 00
4	"	Hamilton Bank	100..	400 00
2	"	High street "	50..	100 00
20	"	Hope Insurance Company	50..	1,000 00
2	"	Lower Glocester Turnpike Co	50..	100 00
121	"	Manufacturers' Bank	100..	12,100 00
115	"	Mechanics' "	50..	5,750 00
14	"	Mech's' and Manufacturing Bank	50..	700 00
61	"	Merchants' Bank	50..	3,050 00
37	"	" " Boston	100..	3,700 00
63	"	National "	100..	6,300 00
57	"	Bank of North America	50..	2,850 00
17	"	North Bank, Boston	100..	1,700 00
25	"	Phenix "	50..	1,250 00
8	"	Powder-Mill Turnpike Co	1..	8 00
4	"	Providence Washington Ins. Co	32..	128 00
24	"	Providence & Worcester R. R. Co	125..	3,000 00
22	"	Roger Williams Bank	75..	1,650 00
39	"	Shawmut Bank	100..	3,900 00
13	"	State " Boston	60..	780 00
10	"	Traders' " "	100..	1,000 00
78	"	Tremont " "	100..	7,800 00
116	"	Union " "	50..	5,800 00
24	"	" " "	100..	2,400 00
13	"	Western Railroad Company	125..	1,625 00
38	"	Weybosset Bank	50..	1,900 00

U. S. 7.30's, (loan of 1861)	9,500 00
Note C. F. Eaton, February 25, 1864, payable on demand, with interest	400 00
Note Sarah B. Merserve, March 30, 1863, payable on demand, with interest	40 00
Note Amasa Mason, November 29, 1861, on demand, with interest	500 00
Joint note of G. B. Ruggles, Amasa M. Eaton, and C. F. Eaton, December 30, 1862, on demand, with interest	450 00
202 Mortgage-note, James Fisher, September 18, 1856, 1 year, with interest	$2,500 00
Mortgage-note, F. S. Church, April 1, 1852, 3 years, with interest	3,000 00
Note Z. Allen, May 1, 1858, 3 years, with interest, for $2,517.12, about	600 00
Due-bill of J. D. Frost, March 11, 1859, payable in goods.	20 44
Cash on hand, August 1, 1864	377 92
	$158,025 24

The following evidences of property are considered worthless:

Protested note R. J. Peckham, April 20, 1857, 6 months, with interest, for	$500 00
Note of John Merriss, March 31, 1855, 3 years, with interest	34 67
Note Elm Street Manufacturing Company, March 9, 1857, 6 months, with interest, for	2,253 51
Note Elm Street Manufacturing Company, March 16, 1857, 6 months, with interest, for	2,253 52
Note of D. D. Bates, June 1, 1862, 6 months, with interest, for	600 00
	$5,641 70

JAMES Y. SMITH,
W. M. BAILEY, JR.,
BROWN BURLINGAME,
Appraisers.

TOWN CLERK'S OFFICE,
North Providence, May 3, 1871.

I certify that at a court of probate held in and for the town of North Providence, held on third day of October, A. D. 1864, that the will of Mrs. Sarah B. Eaton was proved, and on the same day William M. Bailey, jr., Brown Burlingame, and James Y. Smith were appointed appraisers on the estate of Sarah B. Eaton, as appears of record in this office.

ROYAL LEE,
Town Clerk.

[5-ct. int. rev. stamp.]

203 TOWN CLERK'S OFFICE,
North Providence, May 3, 1871.

I certify that the aforegoing are true copies of the original on file in this office.

ROYAL LEE,
Town Clerk.

[5-ct. int. rev. stamp.]

B.

[Stamp.]

Memorandum of an agreement made and concluded this fifteenth day of May, A. D. 1866, by and between the Union Coal and Oil Company, of Maysville, in the State of Kentucky, of the first part, and Bailey & Eaton, of Providence, in the State of Rhode Island, of the second part, as follows:

That the said Bailey & Eaton have proposed to the said Union Coal and Oil Company to continue to be the selling agents of all their products, with the right to sell the same at any and all places, and with the exclusive right to sell such products within all of the New England States, together with the States of New York, New Jersey, and Pennsylvania east of the Alleghany Mountains, by themselves or through their agents; but no agent for such purpose shall, in any event whatever, be employed by said Bailey & Eaton in any other than the New England States and the States of New York, New Jersey, and Eastern Pennsylvania, except the same be at first approved by the board of directors of the said Union Coal and Oil Company;

That the said Union Coal and Oil Company shall make shipments of their products to the said Bailey & Eaton, as near as may be, at regular intervals, and in uniform quantities;

That the said party of the first part, whenever they make any shipment of their products to said party of the second part, may at the same time make their drafts on the said party of the second part, payable in not less than four months from the date of said shipment, as follows, viz:

On lubricating oil for an amount not exceeding fifty (50) cents
204 per gallon on the amount then shipped, and on paraffine wax and candles for an amount not exceeding twenty (20) cents per pound on the amount then shipped, and on any other product for an amount not exceeding sixty-six (66) per cent. of its probable market-value at the time of said shipment.

Provided, however, that in case there should be at the maturity of said drafts, or of any one thereof, no funds of the said party of the first part in the possession of said party of the second part to meet the payment of said drafts, then in that event the party of the first part shall, upon due notice of the want of funds for such purpose, take up said drafts at maturity, and protect the said party of the second part for and on account of the same. Provided, also, that if in any such case the party of the second part waive their right to call upon the party of the first part to protect them from drafts due or coming due, it shall not in any manner invalidate or affect such right in reference to any other draft than that in the case of which it is thus waived.

That the said party of the first part shall pay the party of the second part all sums paid by the party of the second part for freight, cartage, and labor incidental to the preparation and sale of the products of said party of the first part, for all sums paid by the party of the second part to their agents as commissions for selling said products, or as salaries and expenses of their traveling agents, for all sums paid for advertising, for any sums paid for rent of factory for straining and storing oils in advance of their immediate need for sale, for any sums paid for insurance of oils stored in such factory, and for other necessaary expenses of conducting the business, saving and excepting only the amounts paid for rent of stores, for clerk-hire, insurance, and immediate office expenses,

such as fuel, lights, water, books, stationary, &c., which said excepted amounts are to be paid and borne by the party of the second part.

Provided, however, that the price of oils and of other products of the party of the first part, and the number and salary of agents to be employed by the party of the second part, shall at all times and in all cases be subject to the approval of the board of directors of the party of the first part.

That the party of the first part shall furnish the necessary funds
205 and pay for all animal oils or other materials used in the preparation of mixed oils by the party of the second part, and the said party of the second part shall not hold at any one time more unmixed animal oil than is absolutely necessary to meet their sales for one month, without the knowledge of the directors of the party of the first part.

That all payments made by the party of the second part for and on account of the party of the first part shall be charged to the party of the first part as cash at the time of actual payment, and interest shall be allowed thereon; and all sums received or receivable for the sales of any and all of the products or of mixed oils of the party of the first part by the party of the second part, shall be credited the party of the first part by the party of the second part on the day when such sale or sales shall be made, and said party of the second part shall allow said party of the first part interest on all such sales after forty (40) days from the date of such sales.

That the party of the first part shall pay the party of the second part, as a commission for sales made by the party of the second part, or by their agent or employees, and for guaranteeing the payment for all sales made by the party of the second part, or by their agents or employees, as follows, viz: A commission of eight (8) per cent. on pure or mixed oils and on axle grease, and a commission of five (5) per cent. on paraffine wax and candles.

That the party of the second part shall keep full and accurate account of all the expenses incurred and assumed by them, exclusive of those charged by them to the party of the first part, and including interest paid over and above the amount of interest which may be charged the party of the first part by the party of the second part.

That if the commissions paid the party of the second part by the party of the first part from July 2d, 1866, to June 30th, 1867, (both included,) do not amount to six thousand dollars ($6,000) more than the expenses and interest as above assumed by the party of the second part, the party of the first part shall then make good to the party of the second part such sum over and above such expenses and interest so assumed.

That all accumulations of money in the hands and possession of
206 the party of the second part over and above what is necessary to carry on the business aforesaid, the said party of the second part shall remit to the party of the first part, or deposit the same in some good bank to the credit of the party of the first part, notifying the party of the first part of the time and amount of such deposit.

That the amount of money necessary to carry on the business aforesaid shall be subject to arrangement from month to month between the parties of the first and second part.

That the party of the second part shall make out and present to the board of directors of the party of the first part, at each of their monthly meetings, a full and exact statement of their account with the party of the first part.

That their contract or agreement shall continue in full force and effect

from the fifteenth (15th) day of May, A. D. 1866, before mentioned, until the thirtieth day of June, A. D. 1867, and shall be renewed from year to year, provided the same shall be mutually desired, and the terms and conditions thereof be mutually satisfactory to all the parties hereto.

The foregoing proposals on the part of the said Bailey & Eaton the said Union Coal and Oil Company have accepted and do hereby accept; therefore each of said parties hereby promises to and with the other that they will well and truly perform all things which on their part are necessary or proper to be done to carry said agreements into effect according to the true intent and meaning thereof.

In testimony whereof the said parties have hereunto interchangeably subscribed this agreement the day and year first above written.

For board of directors.

JAMES Y. SMITH.
BAILEY & EATON.

C.

In answer to interrogatory 39, I submit the following, as the nearest estimate I can make:

1866.		DR.	
Dec.	31.	Union Coal and Oil Company, Dr., on books of Bailey & Eaton, Providence	$84,375 73
207	1866.		
June	29.	Balance of interest on their account, to date	$3,248 54
"		Company's acceptance of Bailey & Eaton's draft, not paid by the company, but by W. M. Bailey, as endorser, and by him charged to Bailey & Eaton	10,000 00
"		Interest thereon, a 7½ per cent	181 25
"		Amount due Bailey & Eaton by the company, to make guaranteed profit of $6,000	6,070 78
Dec.	31.	Balance of interest on their account, to date	3,840 74
			$107,717 04
1867.		CR.	
Sept.	16.	For amount standing to credit of S. P. Sandford, for commission on sales, and charged to the company, now placed to the company's credit, they having settled in full with him	$253 42
Dec.	28.	Balance of company's account on books of Bailey & Eaton, Boston, now transferred to books of Bailey & Eaton, Providence	67,383 39
			$67,636 81
		Balance due Bailey & Eaton by Union Coal and Oil Company	40,080 23
			$107,717 04

F.

(Copy.)—In answer to 10th interrogatory.

PROVIDENCE, *Aug.* 11, 1868.

DEAR SIR: Until otherwise instructed, please pay from funds deposited now in your bank to the credit of estate of S. B. Eaton, or

208 which may be collected for or deposited to the credit of said estate, upon order or checks signed either by W. M. Bailey, for the trustees, or by Amasa M. Eaton, for the trustees, and this shall be your sufficient authority for so doing.

Yours, truly,

Signed W'M M. BAILEY,
" G. B. RUGGLES,
" AMASA M. EATON,
Trustees.

F. A. CRANSTON, Esq.,
Cashier Old National Bank, Providence.

G.

Statement in answer to 21st interrogatory.

March	8.	His share of Bible bought	$4 00
	12.	Newhall's bill	4 25
April	4.	Bill coal	7 25
	6.	Coachman	41 98
	18.	½ barrel flour	9 00
	22.	Cash	50 00
	30.	Bill hay	17 30
May	3.	Servant's wages	11 64
	3.	F. A. Paige & Co.'s bill	13 47
	4.	Wages	4 00
	9.	"	5 00
	10.	"	15 00
	14.	S. S. Reynolds & Co. bill	34 50
	15.	Household expenses	18 20
	17.	Wages	5 00
	29.	Expressage	1 17
June	1.	Wages	4 43
	1.	"	9 71
	1.	Expressage	72
	4.	Hawkins' bill	46 76
	5.	Cash	5 00
	12.	"	41 87
June	12.	Petty cash expenses, February and March	$44 64
	12.	" " " April 1 to May 9	49 03
	12.	" " " May 9 to June 8	12 24
	13.	Wages	3 00
	14.	"	15 00
	18.	Tin measure	15
	18.	Cash	48 03
	18.	Sherman's bill	22 80
	19.	Hawkins' bill	42 91
	19.	Croquet	10 00
	21.	Wages	13 00
	28.	Recording deed	50
	28.	Labor	2 41
	28.	U. S. taxes	6 20
July	2.	Wages	16 63
	5.	Milk	62
	5.	Household expenses	98 81
	5.	Moulton's bill	27 75
	5.	Wages	20 00

	10.	"	14 00
	12.	Hay bill	15 74
	20.	Bill wire	1 65
	20.	Knight, Cutler & Co., bill	14 00
	25.	Gorham & Co., bill	38 66
	25.	Wages	51 00
	26.	Cash	47 50
	26.	Chace bill	28 62
	27.	Wages	2 00
	31.	Sundries, petty cash	27 13
	31.	Interest charges	1,058 57
Aug.	9.	Wages and household expenses	52 66
	10.	Cash	17 00
	29.	F. A. Paige, bill	6 76
	29.	Household expenses	36 66
Sept.	7.	" "	2 00
	7.	Hawkins' bill	41 37
	12.	Sundries	10 61
	24.	Cash	96 00
210	24.	Received for G. B. Ruggles	$100 00
	24.	Received for C. F. Eaton	100 00
Oct.	1.	Amount due for rent	500 00
	1.	Hawkins' bill	30 60
	3.	Passage to Europe, etc	170 00
	31.	North Providence tax	3 64
Nov.	9.	Sundries from petty cash account	45 89
	19.	Hawkins' bill	6 98
	25.	Draft expenses in Europe	69 39
Dec.	10.	North Providence school-tax	1 46
	24.	Draft expenses in Europe	200 53
	30.	" " " "	134 08
	31.	Sundries	5 00
1868.			
Jan.	6.	Gorham & Brown's bill	162 50
	13.	Draft	69 10
	21.	C. O'Neil's bill	326 66
	30.	Draft expenses to Europe	70 58
Feb.	24.	Draft expenses to Europe	69 87
	29.	Barrett bill	4 65
	29.	Draft	70 20
	29.	Moulton bill	75
March	7.	Draft	70 44
	24.	"	69 52
	28.	"	137 78
April	4.	"	309 83
	16.	Family expenses	8 52
	16.	Paige's bill	14 49
	20.	Draft	104 05
May	1.	"	138 39
	9.	Sundries	3 06
	27.	U. S. tax	6 00
	27.	Hayward's bill	24 25
	28.	Hodges' bill	3 83
June	24.	A's share North Providence tax, 1867	181 88
	24.	Interest on above	7 18
July	18.	Knight, Cutler & Co.'s bill	8 95

	18.	Sundries	30 87
211	31.	Carpenter & Son's bill	$10 59
	31.	Cash	5 00
	31.	Interest	1,038 44
	31.	"	1,252 53
Aug.	1.	Hawkins' bill	6 84
	6.	Interest	9 06
	8.	Cash	20 00
	15.	"	225 00
	15.	Interest	1 45
	26.	Elliott bill	31 21
Sept.	5.	Wages, $2.33; Paige bill, $34.41; Hawkins, $2.90.	39 64
Oct.	2.	Knight, Cutler & Co.'s bill, $9.00; North Providence tax, $185.53	194 53
Nov.	5.	Hawkins' bill, $8.51; Dec. 2, W. Potter's bill, $8.00; 18th, cash, $10.00	26 51
Dec.	18.	White bill	7 50
	24.	Hawkins' bill	9 42
			$8,482 72

Deposition of George B. Ruggles.

GEORGE B. RUGGLES, having been sworn according to law, testifies and says as follows:

Int. 1. What is your age, name, and residence?

Ans. My age is 43 years; George B. Ruggles is my name; my residence is Glocester, R. I.

Int. 2. Are you a son of the late Sarah B. Eaton, and brother or half-brother of Amasa M. Eaton?

Ans. I am a son of the late Sarah B. Eaton, and half-brother of Amasa M. Eaton.

Int. 3. Are you the George B. Ruggles named as one of the trustees in the will of said Sarah B. Eaton; and, if yea, state whether or not you have accepted the trust created by said will, and acted as one of the trustees in conjunction with the other trustees therein named.

212 Ans. I am the person mentioned. I have accepted the trust, and have acted as trustee in conjunction with the two other trustees therein named.

Int. 4. State, if you recollect, the failure of Bailey & Eaton, of March, 1, 1867, and their assignment of that date to the complainant, and the individual assignment of said Eaton to the complainant.

Ans. I do.

Int. 5. State whether or not the trustees under your mother's will, at any time before or after the date of said assignment, have had any settlement or settlements with said Amasa M. Eaton of or in relation to the share of interest in or income from said Sarah B. Eaton's trust-estate, as one of the beneficiaries under her will; if yea, state the time or times of such settlement or settlements.

Ans. We did make a settlement some time in January, 1867. We have made no settlement since, so far as he is concerned, as a beneficiary of the estate.

Int. 6. State whether or not the trustees, after said assignment of Bailey & Eaton and that of said Eaton, of March 1, 1867, had paid, advanced, or made over to or for the use of said A. M. Eaton, as a beneficiary thereto entitled under his mother's will, any part, either of the

capital or income, of said trust-estate; if yea, state the time or times, and the sum or sums, and the name or names of the trustees by whom such payment or payments were made or sum or sums were advanced.

(Objected to by complainant's counsel.)

Ans. The trustees have never made any payment or advancement to A. M. Eaton, as beneficiary under his mother's will, since March 1, 1867, or since his failure.

Int. 7. State whether or not the will of said Sarah B. Eaton contains the provision following, viz: "And in case after the cessation of said income as to my said sons respectively, otherwise than by death as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part
213 of the income to which my said sons respectively would have been entitled under the preceding trusts in case the forfeiture hereinbefore provided for had not happened;" and if yea, state whether or not the trustees under said will, since said Bailey & Eaton's assignment, and that of said A. M. Eaton, to the complainant, of March 1, 1867, have ever at any time exercised, or attempted to exercise, in behalf of said A. M. Eaton, as a beneficiary under said will, the discretion vested in them by the before-recited clause in said will, in paying to or applying for his use any part of the income from said trust-estate.

(Objected to by complainant's counsel.)

Ans. There is such a clause in the will of Sarah B. Eaton. The trustees have not exercised the discretion mentioned, in favor of Amasa M. Eaton, as a beneficiary, since his failure, March 1, 1867.

Int. 8. State whether or not, since A. M. Eaton's petition and his assignment in bankruptcy, the trustees have conferred or consulted together in reference to paying or applying to his use, as a beneficiary under said will, any portion of the income under said trust-estate.

(Objected to as before.)

Ans. Since said assignment the trustees have several times conferred together, and concluded to make no payment or advancement to said Amasa M. Eaton, as a beneficiary of the estate of Sarah B. Eaton.

Int. 9. State whether or not the trustees, at different times, executed a written authority to either of their number, one or more, to draw checks on banks where the funds of the estate were deposited.

Ans. They have executed such authority to different ones of the trustees.

Int. 10. State if you yourself and the other trustees signed said instruments of authority, and the reasons for giving such authority to less than the whole number.

Ans. We all signed as trustees such authority. It was necessary on account of my living some fifteen miles out of town, and Amasa M. Eaton's absence in Europe for a time during such period.

214 Int. 11. Please look at Exhibit F annexed to the deposition of Amasa M. Eaton, dated Providence, August 11, 1868, signed William M. Bailey, G. B. Ruggles, Amasa M. Eaton, and say whether or not that is a copy of one of said powers.

Ans. To the best of my knowledge it is. It reads very familiar, and I should say it was. From my recollection I should say it was the same form we have always used.

Int. 12. Please state your object and that of the other trustees, as far as known to you, in so delegating authority to one of your number, either Bailey or Eaton, to draw upon the funds of the estate.

Ans. It was necessary, of course, for some one of our number to sign checks to meet demands upon the estate. My absence from town prevented me from attending to it. So the power was delegated sometimes to Mr. Bailey and Amasa together, and at other times to Amasa alone, and sometimes to Mr. Bailey alone.

Int. 13. State which one of the trustees has had generally the active management of the details of the business of the trust-estate, and in superintending the real estate, the homestead farm belonging to the estate, the improvements thereon, care of the stock, from about March 1, 1867, to the present time.

Ans. Since March, 1867, to the present time, Amasa M. Eaton has had the care of the detail of all the business of the trust-estate, consulting of course with his co-trustees, excepting the time that he was in Europe, when William M. Bailey conducted such detail, consulting with me as trustee from time to time, as opportunity offered, and sometimes by letter.

Int. 14. While Amasa M. Eaton was in Europe, as you have mentioned, who acted as clerk and kept the books for the trustees?

Ans. William M. Bailey, jr., son of William M. Bailey, trustee.

Int. 15. In the conduct of the details of the estate by Amasa M. Eaton, was he or not required to pay out money for labor, taxes, and other expenses, from time to time?

Ans. He was required so to do.

215 Int. 16. In giving the power to draw checks similar to that dated August 11, 1868, to said Amasa M. Eaton, was it the design or intention of the trustees thereby to authorize him to apply to his own use, as a beneficiary under the will, any moneys he might so draw by virtue of said authority?

(Objected to by complainant's counsel.)

Ans. It was not the intention of the trustees to give to said Amasa M. Eaton any authority to draw any money for his own use as a beneficiary of the estate.

Int. 17. State what year you ceased to reside with your mother, and whether up to that time you had always lived with her.

Ans. I resided with my mother until her death in 1864, with the exception of about a year's residence in Buffalo, N. Y., and a three years' absence in Europe, during which time for the most part I was with her and her family.

Int. 18. State whether or not, as eldest son, your mother intrusted to you, after the death of your step-father, Levi C. Eaton, the management, more or less, of her estate and business, and to what extent.

Ans. She did intrust me for the most part with the detail of all her business in relation to both personal property and real estate, after the death of Mr. Eaton, about the year 1852, up to the time of her death.

The defendant, not waiving his objections to the preceding examination, submits the following cross-interrogatories:

Int. 1. Please state when you accepted the trust created by your mother's will, and how.

Ans. We took our engagement as executors soon after mother's death, and our duties as trustees naturally merged into those of trustees from that of executors.

Int. 2. What was the first thing you did as a trustee under your mother's will?

Ans. I could not recollect any definite act as trustee after our duties as executors ceased.

Int. 3. Please state when your duties as an executor ceased.

216 Ans. I cannot recollect. I should think something over a year before the estate was settled.

Int. 4. If you remember of doing any act as one of the trustees, please state what that act was and when done.

Ans. I could specify a number of acts I did as trustee. All deeds, powers of attorney, transfers of stock, I signed with the other trustees. It would be difficult for me to name day and date for any one act as trustee, for my signature was required for every transfer of stock, every deed or other transfer of property, and sometimes my signature might be required two or three times a week. I distinctly recollect signing these several powers of attorney to draw checks, deeds, and other instruments. And of course I never charged my mind with the dates.

Int. 5. My inquiry is directed to the first act done as trustee that you remember of. Please state what is the first act as trustee that you can fix in your memory, and when.

Ans. The first definite act that I can remember was the transfer of bank-stocks, mining-stocks, &c., from ourselves as executors to our own names as trustees.

Int. 6. Where did you do that?

Ans. I think it was at the office of Bailey & Eaton, in Providence.

Int. 7. Please state when that was, and what occurred on that occasion.

Ans. I cannot give the date. I simply remember signing these documents, and running over the list of stocks to see that the transfers corresponded.

Int. 8. State, as near as you can, about the time when this took place.

Ans. I cannot tell the date, because I did not charge my mind with it. I can only say it was about the time our duties as trustees commenced. I could easily have answered these questions if I had prepared myself by referring to our books, which we keep as trustees of the estate.

Int. 9. Please state what is the next act done by you as trustee, including any conference or consultation with your co-trustees, that you remember.

217 Ans. I cannot give any definite act with certainty as to date. But I should sav that we had a conference with regard to how the bonds-account was to be kept, and consulted with regard to other matters about the farm and other detail' of the estate.

Int. 10. Please state, if you are able, the time, or about the time, when this consultation was.

Ans. I could not state the time. I have no data to go upon. We were not at that time in the habit of keeping a record of our meetings. I was down, backwards and forwards, quite often to Providence, and we would have informal meetings about anything that was required to be acted upon by us as trustees.

Int. 11. You say you did not at that time keep records of the meetings of the trustees. Please state when such records were commenced to be kept, if any such are or have been kept.

Ans. There have been memoranda made, from time to time, for a long period, upon our books, and also a regular book has been kept of our quarterly meetings, which we began to hold in April last.

Int. 12. Please state what act you next did as trustee, after the conference about the bank-account you have spoken of, as near as you are able.

Ans. I cannot say. It was probably to sign some instrument that required my signature as co-trustee.

Int. 13. Please bear in mind that I am inquiring not about the probable acts, but only about the acts you definitely remember. Please state any act as trustee that you remember of doing, after the conference in regard to the bank-account, and when it was, as near as you are able.

Ans. I cannot give any act, with the day and date.

Int. 14. Give any act without day and date that you definitely remember, and the earliest one after this consultation spoken of.

Ans. I could not say what was the first one after our consultation.

Int. 15. You have spoken in one of your answers of memoranda
218 of meetings of the trustees. Please state, if you are able, of what meetings memoranda were made, and the date, as near as you can, of the first of such meetings.

Ans. I cannot give any dates. Memoranda were frequently made upon our books, explaining an entry for instance, so that the transaction would be brought up to any trustee who was looking over the books.

Int. 16. Who made the memoranda?

Ans. Amasa M. Eaton kept the books most of the time. And William M. Bailey, jr., kept the books while Amasa was in Europe. The entries were made by the person who kept the books, whoever it might be, for the time being. The entries to which I refer, including memoranda, were often made on our journal or day-book which we kept as trustees.

Int. 17. When not so made on the journal or day-book, where were they made?

Ans. I cannot say that there was any regular book of memoranda, that is, a record-book which would be considered a book of our regular set, until April last.

Int. 18. Please state exactly what you mean when you say there was memoranda, or a record of any kind, kept of the meetings of the trustees. State whether you mean when the trustees met, one of them acted as secretary in any way, and recorded the doings of the meeting in any manner; if nay, exactly what did you mean when you first spoke of memoranda?

Ans. Our meetings were usually informal. No regular secretary was appointed. But Amasa and Mr. Bailey usually had a memoranda, a slip of paper or a small book, of whatever business they wished to bring before us three as trustees. I wish to add here, frequently memoranda would be taken as to what the trustees though' best to do in relation to the business brought before us. I living out of town, I did not attend to the detail of the business. But, from time to time, when in the city, I would look over the books and receive whatever explanation they required from my brother Amasa or Mr. Bailey.

Int. 19. Please state if you remember any transaction of the trustees in 1866; if yea, what, what part you took in it, if any, and what occurred. Please state as particularly as you are able, if any transaction took
place.
219 Ans. I do not recollect any definite act, that I should be willing to locate in that year. I know that there must have been a large number of instruments signed by me as co-trustee during that year. But I cannot specify any one definite act.

Int. 20. Please state, if you remember, any transaction of the trustees in 1867; if yea, what, what part you took in it, if any, and what occurred.

Ans. I know we consulted during 1867 about many matters of business in relation to the estate, but not having any reason to charge my

mind with dates, and not having any regular day of meeting, I cannot give the dates when we did meet.

Int. 21. Please state if you can recollect any one thing; if so, what, and state it as particularly as you are able.

Ans. I recollect that we had a meeting at Mr. Bailey's house in relation to platting some parts of the real estate and bringing it gradually into the market. I remember also that matters in relation to the farm were talked over, and also some transfers of stock, and investments in more productive property were discussed.

Int. 22. What time in 1867 did the meeting referred to in your last answer take place?

Ans. I think it was in the winter of 1866 or 1867. I mean the fore part of 1867.

Int. 23. What other meeting, if any, do you remember having taken place in 1867?

Ans. I do not recollect any other meeting. I have none in my mind at present. I do not mean to say by that, that we had no other meetings, but that I recollect no other. I have no doubt that there were other meetings.

Int. 24. What notice, if any, did you have of the last meeting you have spoken of, and how came you to attend it?

Ans. I do not recollect. I may have received a notice or I may not. I cannot say. I was frequently in town, and meetings would be held at those times without any formal notice.

Int. 25. Please state any transaction you remember of the trustees, in which you participated, that occurred in 1868. Please state as particularly as you are able.

Ans. I do not recollect anything of importance.

220 Int. 26. Do you recollect anything, whether important or unimportant?

Ans. I recollect going about the farm occasionally during that year. I mean the homestead estate. I made it a habit when in town to go to the office to see whether there were any papers to sign that required my signature as co-trustee. I recollect going to the office for such purposes. I do not recall any definite act that I can give a date to.

Int. 27. Can you recall any act transacted in 1866, '67, or '68, or about those years, other than those spoken of by you in answer to the 19th cross-interrogatory and the following cross-interrogatories?

Ans. During these three years many acts of business were done that required my signature, which I always gave, when requested by the trustees, if, on examination, I found that it met my approval. I know that during this period we made some changes of investment of personal property, and I know that we frequently, during this period, had meetings in relation to the business of the estate. I cannot specify any more particularly than I have done.

Direct examination resumed:

Int. 1. You have stated that you reside about fifteen miles out of the city, apart from the other trustees. Please state how often the convenience of your own business or pleasure has brought you to the city, from the year 1865 to the present time.

Ans. Sometimes several weeks would elapse between my visits to the city; at other times I would be in two or three times a week; and sometimes I would make quite a visit at the homestead place, where my brother Amasa lives, and a short walk, not over a quarter of a mile, from Mr. Bailey's residence.

Int. 2. State how often, when on these visits to the city, or when you came for that purpose, you have consulted with the trustees in regard to the business of the trust estate, each year since the commencement of the trust to the present time.

Ans. The periods of our meeting have varied; whenever I have
221 met either of the trustees they would usually consult me in regard to current business, and if anything particular was to be transacted we would all three meet; and quite often I would give my opinion by letter in regard to matters of the estate.

Int. 3. State whether or not any business relating to the estate, other than ordinary or current details, has been transacted without the knowledge, conference, and assent of the three trustees.

Ans. There has not, to my knowledge.

Int. 4. Have the three trustees had occasion from time to time to confer together, and have they so conferred together in regard to the business of the estate, and except the power to draw checks as before explained, or a power to transfer stocks, have you ever delegated any power to the other trustees, or either of them, to act for you in discharge of the trust?

Ans. We have frequently conferred together. I never have delegated such power, with some exceptions. For instance, in the sale of real estate, I have in some instances requested the other two trustees to fix the price at which they would sell, they being familiar with current prices, telling them that I would abide by their action. And I also on one occasion gave Mr. Bailey authority to sign for me as trustee, if my absence was unavoidable, such as orders for dividends. No deeds or transfers of stock, or anything of importance, were signed in that way.

Cross-examination resumed:

Int. 28. You say, in answer to direct interrogatory 18, that you had charge of your mother's property for a number of years prior to her death. Please state whether, in or about the year 1860, you caused to be advertised all or any part of the stocks or other securities of your mother for sale.

Ans. I did not advertise them as my mother's property. I advertised them on my own responsibility. I advertised none that belonged to my mother. I was contemplating going into the business of a broker, and I advertised the same as any other broker.

Int. 29. Please state if you did not cause to be advertised by
222 A. B. Dike, a stock-auctioneer of this city, certain stocks of the same character as those owned by your mother, and please state whether at that time you owned, in your own name, any stocks such as you had caused to be advertised for sale.

Ans. Of course they were of the same character as my mother's stocks. Bank-stocks and some insurance-stock. I held in my own name some bank-stock and some insurance-stock. I think some of them were of the same corporations as the stock of my mother. I did own in my own name some stocks of the same nature as that I advertised for sale. I do not mean to say that all the stocks I advertised were my own. I advertised them the same as any other broker.

Int. 30. Please state whether or not, during some part of 1860, you were not mentally incapacitated from managing your mother's business, and whether you were not in that year an inmate of the Butler Hospital for the Insane.

Ans. I was so incapacitated, I suppose, and I went over to the Butler Hospital.

Int. 31. Were you ever an inmate of that institution more than once; and if yea, how many times, and when?

Ans. I was once before that time. It was in the year 1850, or about that time.

Int. 32. Please state whether you were ever mentally incapacitated from doing business at any time between those two times you have spoken of, between 1850 and 1860, and if so, when, and where.

Ans. I was, during the residence of the family in Europe. Somewhere about the year 1853. It was during a short period of the time I was abroad.

Int. 33. Please state if the stock you have spoken of was sold at auction as advertised, or otherwise, and if not, why not.

Ans. There were no sales made. It was about the time I was taken ill; a short time before.

Int. 34. Please state whether you or your friends withdrew said advertisement.

Ans. I think it was my friends. I do not know of my own knowledge. I took it for granted they did it.

G. B. RUGGLES.

223 SUPPLEMENTAL.

CHARLES A. NICHOLS, ASSIGNEE, &C., }
vs.
AMASA M. EATON ET AL. }

Deposition of Charles F. Eaton, for defendants.

Examination of witnesses on behalf of the defendants, before Sumner U. Shearman, examiner, at the office of Samuel Currey, on the 25th day of May, 1872.

CHARLES F. EATON, having been duly sworn according to law, testifies and says as follows:

Ques. 1. What is your age and place of residence and occupation?

Ans. I am twenty-nine years old; North Providence; my occupation is that of a farmer.

Ques. 2. Are you a son of Sarah B. Eaton, late of North Providence, deceased?

Ans. I am; and brother to Amasa Eaton, and half-brother to George B. Ruggles.

Ques. 3. Please state any arrangement or agreement you and your brother, George B. Ruggles, had with Charles A. Nichols, or any
224 person acting in his behalf as assignee of your brother Amasa, about March 1st, 1867, or soon after, in regard to the payment of the individual liabilities of the said Amasa, for or in consideration of the transfer and conveyance to yourself and the said George B. Ruggles by said assignee, of the assigned individual estate and assets of the said Amasa.

Ans. The agreement was this: My brother George B. Ruggles and myself agreed to pay Amasa M. Eaton's individual liabilities, and he and his assignee were to transfer to George B. Ruggles and myself his individual assigned property and assets. I do not recollect the precise time, but it was in the spring of 1867, as near as I can remember.

Ques. 4. Were such liabilities assumed and paid by yourself and your brother George?

Ans. They were paid by my brother Amasa M. Eaton. I empowered him to act for me.

Ques. 5. Do you mean by your answer to the last question, when you say your brother Amasa acting for you, to exclude your brother George B. Ruggles from any part in the matter, or how do you mean?

Ans. I mean to speak only for myself.

Ques. 6. Did you know or not whether George B. Ruggles took part in the matter in his own behalf?

Ans. After this agreement was made I did not charge myself with the matter at all, and trusted my brother Amasa M. Eaton to act for me, and paid no further attention to it at the time.

Cross-examination:

Ques. 1. (By HORATIO ROGERS.) Please state whether you made the agreement referred to with Charles A. Nichols personally, or whether your knowledge is derived from the hearsay of others.

Ans. I never had any personal interview with Mr. Nichols about it.

Ques. 2. Did you ever have any written communication with Mr. Nichols about it?

Ans. Never.

225 Ques. 3. Then I understand your knowledge of the agreement, if any, to which you have referred in your direct examination, is derived entirely from hearsay. Is that a correct understanding?

Ans. No, sir. I distinctly agreed to the agreement, and gave my consent at the time with my brother George B. Ruggles.

Ques. 4. To whom did you give such assent?

Ans. Amasa M. Eaton, George B. Ruggles, and William M. Bailey.

Ques. 5. Did you ever give any such assent to Mr. Nichols personally, about that or any other agreement?

Ans. I may possibly have done so, but I don't recollect it.

Ques. 6. As a matter of fact, is not all of your knowledge of this agreement derived from Amasa M. Eaton, and did he not repeat to you what you may have heard about it?

Ans. No, sir; it is not.

Ques. 6. From whom else did you hear about the agreement you refer to, or derive knowledge of it?

Ans. I had no interview, direct or indirect, with Mr. Nichols, and no communication, either by word or writing, with him, that I can recollect.

Ques. 7. What property did you understand you purchased from Mr. Nichols?

Answer. Amasa Eaton's own private individual property and assets.

Ques. 8. What was the property? What did it consist of? State, if you know.

Ans. The stock on the farm, horses, carriages, furniture, and all those things; also his income.

Ques. 9. What income? from what source?

Ans. His income from all sources.

Ques. 10. When you say from all sources, please specify the sources, as a matter of fact.

Ans. I cannot specify his income from all sources. The only income I know of is from the estate, that I could specify.

Ques. 11. You mean the estate of your mother, Sarah B. Eaton?

Ans. I do.

226 Ques. 12. Do you remember any other property?

Ans. I made no inquiries as to the property at the time. As

I said before, I consented to the arrangement in perfect confidence with my brother, Amasa M. Eaton.

Ques. 13. Do you still hold that property?

Ans. I do.

Ques. 14. Then tell us, please, what it is, if you still hold it.

Ans. We hold an indebtedness of his to us.

Ques. 15. State all the property that you know; and if you do not know, please to say so.

Ans. All the property that I know, is what I have enumerated.

Ques. 16. Have you ever transferred any of that property?

Ans. No.

Ques. 17. Please state how you paid for this property.

Ans. It was advanced from the estate of Sarah B. Eaton, and charged to George B. Ruggles and myself as an advancement.

Direct examination resumed:

Ques. 1. What was your age in the spring of 1867?

Ans. Twenty-four.

Ques. 2. Had you ever at that time transacted any business on your own account?

Ans. No, I had not.

Ques. 3. You state in your answer to the third direct interrogatory, "My brother George B. Ruggles and myself agreed to pay Amasa M. Eaton's individual liabilities, and he and his assignee were to transfer to George B. Ruggles and myself his individual assigned property and assets." Was such transfer, to your knowledge, ever made and delivered to yourself and the said Ruggles by any writing signed by the said Nichols?

Ans. None that I know of.

Ques. 4. Did you or not understand that among the assets of the said Amasa were stock in the Manufacturers' National Bank of Providence; also stocks in certain petroleum companies; also in the estate,
227 the assigned estate, a lot of lands in North Providence, on Hardenburg street, and interest in lands on Elk River, West Virginia?

Ans. I did.

Ques. 5. Was there, in any conversation between you and your brother Amasa as to this purchase from the assignee, any list of the assigned property exhibited to you, or had you at the time read his assignment so as to know what were the assets assigned?

Ans. There was no list shown me, neither had I read the assignment.

Ques. 6. Can you now remember any specific article of property named to you by Amasa M. Eaton at the time of that arrangement?

Ans. I can remember none.

Ques. 7. When you say, in answer to interrogatory 12 of the cross-examination, "As I said before, I consented to the arrangement in perfect confidence with my brother Amasa M. Eaton," did you also confide in your brother, George B. Ruggles, and William M. Bailey, trustees under the will, to whom you have referred as giving your consent to, in regard to this arrangement? Did you trouble yourself with the details of the matter, or wholly confide in these persons as having charge of your interest in your mother's estate, and as being your elders?

Ans. I did not trouble myself with the matter at all. I confided my interest to them entirely.

CHARLES F. EATON.

Subscribed and sworn to before me this twenty-fifth day of May, 1872.

SUMNER U. SHEARMAN,
Examiner.

228 *Deposition of Amasa M. Eaton, for defendants.*

Examination of witnesses on behalf of the defendants, before Sumner U. Shearman, at the office of Samuel Currey, on the 25th day of May, 1872.

AMASA M. EATON, being duly sworn according to law, testifies and says as follows:

Ques. 1. You state, in your answer to the 20th direct interrogatory in your deposition in this cause, given in behalf of the defendants, (page 167 of the printed case,) "My brothers, George B. Ruggles and Charles F. Eaton, agreed to buy all my individual assigned property, and to pay all my individual indebtedness as far as it was sufficient." Please state with whom that agreement was made on the part of the said assignee.

Ans. They agreed to pay all my individual indebtedness in full. Although my individual assigned property did not amount to enough to pay my individual indebtedness in full, my said assignee, Charles A. Nichols, made such an agreement with me, I acting for my said brothers. I also acted as agent for my said assignee under his authority and as authorized by him, to settle my individual assignment.

Ques. 2. In the individual assigned property which you say your brothers agreed to buy, please state what property was mentioned or exhibited to your said brothers as included therein; whether you exhibited to them any list thereof, or included in your statement to them thereof any interest that you had or may ever have had in the income of your mother's estate.

(Objected to by plaintiff's counsel.)

Ans. The property which passed under my individual assignment was spoken of as a whole as that which my brothers were to buy of my assignee. No list of the property was made out and exhibited to my brothers in connection with such purchase by them. I did not suppose that any interest that I had or may have had in the income of my mother's estate passed under my individual assignment. We had
229 more than one general conversation in which, incidentally, the prudence, foresight, and good judgment of our mother was spoken of in the will which she left.

Ques. 3. You further stated, in your answer to the said 20th interrogatory, "He [meaning your said assignee] deeded the real estate to them, and to save so many transfers, such of my assigned property as was applied to liquidate my individual indebtedness was transferred directly to the purchasers." Will you produce and annex copies of such deed or deeds of the real estate, and of such transfers made to the purchasers as were applied to liquidate said indebtedness?

Ans. I will annex the original certificates of stock, marked A, B, C, D, and a copy of the deed of real estate, marked E.

AMASA M. EATON.

Subscribed and sworn to before me this twenty-fifth day of May, 1872.

SUMNER U. SHEARMAN,
Examiner.

A.

Shares $10 each.] Number 78. [Shares 5822.

Incorporated under general law of State of New York.

New York and Providence Petroleum Company.

Capital, $300,000.

This is to certify that George B. Ruggles and Charles F. Eaton are entitled to five thousand eight hundred and twenty-two shares in the capital stock of the New York and Providence Petroleum Company, transferable only on the books of the company, in person or by attorney, on the surrender of this certificate.

New York, May 24th, 1867.

[SEAL.] MARCUS A. FINCH,
President.

CHA'S S. LUTHER, *Secretary.*

[25-c't int.-rev. stamp.]

230 For value received, the undersigned hereby assign and transfer unto shares of the capital stock of the New York and Providence Petroleum Company, and do hereby constitute and appoint true and lawful attorney, irrevocable, for and in name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof have hereunto set hand and seals this day of , 186 .

G. B. RUGGLES.

Sealed and delivered in presence of—
F. A. PEIRCE.

B.

No. 27.] [12,997 shares.

North Martinsburg Lead-Mining Company.

Capital, $1,000,000.] [Shares, $5 each.

Organized under the general law of the State of New York.

This is to certify that Amasa M. Eaton, the proprietor of twelve thousand nine hundred and ninety-seven shares of five dollars each full paid in the capital stock of the North Martinsburg Lead-Mining Company, transferable only on the books of the company by him or his attorney on surrender of this certificate.

In witness whereof the said company has caused this certificate to be signed by their president and secretary this third day of October, 1865.

New York, October 3d, 1865.

MARCUS A. FINCH,
President.

CHA'S H. GREEN, *Secretary.*

[25-c't int.-rev. stamp.]

C.

231 No. 44.] STATE OF NEW YORK. [150 shares.

Great Kanawha Oil Company.

Capital $300,000.] [Shares $10 each.

This is to certify that Amasa M. Eaton is the holder of one hundred and fifty shares of the capital stock of the Great Kanawha Oil Company, transferable in person or by attorney only on the books of the company, on the surrender of this certificate.

In witness whereof the president and treasurer have hereunto attached their signatures, and caused the seal of the company to be affixed, at New York, this 7th day of February, A. D. 1865.

[SEAL.] CHA'S DEBEOOISE,
President.

JAMES G. BELKNAP, *Treasurer.*

D.

No. 48.] STATE OF NEW YORK. [50 shares.

Great Kanawha Oil Company.

Capital $300,000.] [Shares $10 each.

This is to certify that Amasa M. Eaton, the holder of fifty shares of the capital stock of the Great Kanawha Oil Company, transferable in person or by attorney only on the books of the company, on the surrender of this certificate.

In witness whereof the president and treasurer have hereunto attached their signatures, and caused the seal of the company to be affixed, at New York, this 20th day of March, A. D. 1865.

[SEAL.] CHA'S DEBEOOISE,
President.

JAMES G. BELKNAP, *Treasurer.*

E.

232 Know all men by these presents, that I, Charles A. Nichols, of the city and county of Providence, in the State of Rhode Island, in my capacity of assignee of Amasa M. Eaton, of North Providence, county and State aforesaid, under and by virtue of an assignment made and executed by him, said Amasa M. Eaton, to me, said Charles A. Nichols, dated the first day of March, A. D. 1867, reference thereto being hereby had and made, in consideration of one hundred and fifty dollars to me in my said capacity paid by George B. Ruggles and Charles F. Eaton, both of North Providence, county and State aforesaid, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign, and convey unto them, the said George B. Ruggles and Charles F. Eaton, their heirs and assigns forever, all my right, title, and interest as assignee as aforesaid in and to the following described estate, namely:

A certain triangular lot of land situated in the southerly part of said town of North Providence, containing two acres, more or less, bounded

westerly by Hardenburgh street, northeasterly by the old Wenscot road, and southerly by a road running from the Douglas Pike into said Hardenburgh street, my interest as assignee being one undivided third part thereof, and the same which was conveyed to said Amasa M. Eaton by Sarah B. Eaton by deed dated December 30th, 1862, to which reference is had:

To have and to hold the same, with all the rights, privileges and appurtenances thereof, to them, the said George B. Ruggles and Charles F. Eaton, their heirs and assigns forever.

In testimony whereof I, the said Charles A. Nichols, in my capacity of assignee, hereto set my hand and seal this fourteenth day of May, A. D. 1867.

CHA'S A. NICHOLS, *Assignee.* [L. S.]

Signed, sealed, and delivered in presence of—
J. G. MARKLAND.

[50-ct. int. rev. stamp.]

233 STATE OF RHODE ISLAND,
City of Providence, 14th May, 1867.

Then and there the above-named Charles A. Nichols acknowledged the above instrument, by him signed, to be his free and voluntary act and deed.

Before me.

J. G. MARKLAND,
Justice of the Peace.

Deposition of Charles A. Nichols, for complainant.

Examination of witnesses in behalf of the complainant, before Sumner U. Shearman, examiner, at the office of Samuel Currey, on the 25th day of May, 1872.

CHARLES A. NICHOLS, having been duly sworn according to law, tescifies and says as follows:

Ques. 1. Please state what was the arrangement, if any, between you and Amasa M. Eaton in regard to a conveyance to his brothers of his individual assigned property.

Ans. I never made any agreement with Amasa M. Eaton or any other person in regard to the assigned property of Amasa M. Eaton except that to which I have already testified. I agreed to sell and did sell certain specified property for a specified amount of money, and that is all the agreement that I made in regard to this assigned property. Some of that property was of speculative and uncertain value, and before I agreed to its sale I made inquiries about its value, both here and in the city of New York, and after an examination I accepted propositions for its purchase, and made conveyance of such property, without any other or further agreement, and without any intention or promise to make any wholesale conveyance.

234 Ques. 2. State what these specific articles of property were that you have mentioned in your answer to the last interrogatory.

Ans. I cannot state from recollection. They were certain oil-leases and stocks, including bank-stocks.

Ques. 3. Did you in any manner agree to convey to George B. Ruggles and Charles F. Eaton any interest in the estate of Mrs. Sarah B. Eaton in a wholesale way?

Ans. I never did.

Ques. 4. When did you first hear from anybody that you had agreed to convey anything that passed to you under Amasa M. Eaton's assignment, but the specific stock and lands mentioned in the assignment and referred to by you?

Ans. After the commencement of this suit.

Ques. 5. Was Amasa M. Eaton authorized by you, as his assignee, to sell the stocks and lands and interest in his mother's estate, if any?

Ans. He had no authority from me whatever other than that I have already stated or implied.

Ques. 6. Was the authority stated or implied anything more than an authority to carry on and close up the oil business, or a branch of the oil business, of Bailey & Eaton, a firm of which he was a member, and of which you were also the assignee?

Ans. The only other authority was to communicate to the parties who proposed to purchase my acceptance of the terms proposed.

Cross-examination:

Ques. 1. Who were the parties that proposed to purchase, referred to by you in your last answer?

A. They were his brothers, as I understood.

Ques. 2. Did not Amasa M. Eaton act for you in attending to many of the details of his assigned individual property, as authorized by you, and was he not in the habit of visiting your office nearly every morning, when you would confer with him as to certain details of the management of his individual assigned property, and on such occasions
235 did you not ask him for his opinion and advice, and did you not after his said brothers had paid his individual indebtedness in full, and you had transferred the evidences of property to them, pay over to the said Amasa, as agent for his said brothers, a cash balance in your hands belonging to his individual assigned property?

Ans. I should say he did not act for me in attending to many details of his assigned individual property, for there were not many details to be attended to. I cannot say that he was in the habit of visiting my office nearly every morning, but he came there very frequently. The occasions for coming there were the fact that he was employed by me as agent in the management of the assets of Bailey & Eaton under pay. Our conferences were principally about this estate, and about his payment to James Y. Smith and what he owed him. I do not recall on a single occasion asking him for his advice and opinion about his individual property. Payment of moneys was not made to him as agent of his brothers, so far as I know.

Ques. 3. Was any such cash balance paid him in any capacity whatever?

Ans. According to my recollection there was a small cash balance in my hands to which I was entitled for my services as assignee. That I gave to Amasa M. Eaton, stating that under the circumstances I should not take compensation, and I gave it to him. I had no reason to suppose, so far as I know, that he paid it to his brothers.

Ques. 4. Have you ever made any statement to anybody that you would not make any charge for your services as assignee for Bailey & Eaton?

Ans. No; I should say not.

Ques. 5. Do you not recollect making such a statement to William C. Chapin and to me?

Ans. No, sir; I do not.

CHARLES A. NICHOLS.

Subscribed and sworn to before me, this twenty-fifth day of May, 1872.

SUMNER U. SHEARMAN,
Examiner.

236 *Deposition of William M. Bailey, for defendants.*

Examination of witnesses on behalf of the defendants, before Sumner U. Shearman, examiner, at the office of Samuel Currey, on the 27th day of May, 1872.

WILLIAM M. BAILEY, having been duly sworn according to law, testifies and says as follows:

Ques. 1. Were you present at an interview between George B. Ruggles and Charles F. Eaton of the one part, and Amasa M. Eaton of the other part, in the year 1867, after said Amasa M. Eaton's assignment of his individual property to Charles A. Nichols, when it was agreed that said George and Charles would pay a balance of the individual indebtedness of said Amasa to the amount of about $11,000? and, if yea, give the date of said agreement, and state what considerations they were to receive for the same.

(Objected to by plaintiff's counsel.)

Ans. I was present at such an interview, at which George B. Ruggles and Charles F. Eaton agreed to pay the liabilities of Amasa M. Eaton under his individual assignment for the sum of about $11,000, for which they were to receive from Charles A. Nichols, assignee, the estate and assets conveyed by his individual assignment. The date of this interview was April 12, 1867.

Ques. 2. Was anything said in said interview about said Amasa's interest in the income of his mother's trust-estate?

Ans. There was not.

WILLIAM M. BAILEY.

Subscribed and sworn to before me this twenty-seventh day of May, 1872.

SUMNER U. SHEARMAN,
Examiner.

237 *Exhibits in answer to cross-interrogatory 55 in deposition of Amasa M. Eaton in behalf of the respondents.*

In the district court of the United States for the district of Rhode Island.

IN THE MATTER OF AMASA M. EATON, A BANKRUPT. } In bankruptcy.

At Providence, in said district, on the 27th day of April, 1869, before Hon. William W. Hoppin, one of the registers in bankruptcy of said court—present, Charles S. Bradley in opposition; Samual Currey for petitioner.

DISTRICT OF RHODE ISLAND, *ss:*

AMASA M. EATON, of Providence, in the county of Providence and State of Rhode Island, being duly sworn and examined at the time and place above mentioned, upon his oath says:

1st int. In the schedule annexed to your petition in bankruptcy you have quoted a portion of the will of your mother devising certain properties to you and others. Will you give the rest of said will, and an entire copy of the same?

Ans. I will furnish a copy. I produce Exhibit A as such copy.

2d int. Give a statement of the property devised by said will, and the present condition of the same.

Ans. I will give you such statement to the best of my ability. I produce Exhibit B and Exhibit C as such statements.

3d int. Who are the trustees under such will, and what is their relation to you by blood, business, neighborhood or personal feelings?

238 Ans. The trustees under such will are William M. Bailey, George B. Ruggles, and myself. Mr. Ruggles is my half-brother. Mr. Bailey is not related to me by blood; by business there is no relation between us. Mr. Bailey is my neighbor. Mr. Bailey is also my friend.

4th int. Was your partner in business Mr. Bailey's son? When did that partnership commence and when terminate? Were Mr. Bailey and Gov. Smith your indorsers in that business, and to what extent?

Ans. He was, The partnership commenced in 1862, I think, and terminated in 1867. Mr. Bailey and Gov. Smith were the endorsers of Bailey & Eaton. These endorsements amounted to about $170,000 at the time of Bailey & Eaton's failure. The failure occurred about 1st March, 1867. The exact amount of the whole endorsements in the business can be ascertained by examination of Bailey & Eaton's books, which are now in possession of Charles A. Nichols, assignee of Bailey & Eaton, and my assignee in bankruptcy. I could give the exact amounts if I could have access to the books.

5th int. What capital had that partnership, and whence was it derived?

Ans. The capital consisted partly of cash and partly of credit. The amount of cash capital furnished by me was $25,000. The remaining capital was furnished according to the wants of the business by the notes of the firm endorsed by James Y. Smith and William M. Bailey.

6th int. Had your partner any property, or had you any except that devised and bequeathed under said will?

Ans. No, sir. I never understood that my partner had any. As for myself, I had nothing of any account.

7th int. Have you made any general assignment of your property prior to said assignment in bankruptcy? if yea, will you produce a copy of the same?

Ans. Bailey & Eaton made an assignment of their property to Charles A. Nichols when they failed, and I did the same. I will produce a copy of the same if necessary. I produce Exhibits D and E as such copies.

8th int. State the mode in which the business of the trust under said will has been conducted. Have all the trustees taken equal parts? Has one or more acted for all?

239 Ans. I am advised by my counsel that I am not obliged to answer this question; still I will answer it. The business was carried on in general by the trustees. They have acted jointly in all matters of importance. Mr. Ruggles living in Glocester, has not assisted in all the details. One or more of the trustees have acted for all when authorized so to do by the three trustees.

9th int. Was such authority in writing?

Ans. It was.

10th int. Please produce a copy of the same.

Ans. I will.

11th int. To whom was it given, and when?

Ans. It was given to the Old National Bank. The date I do not remember.

12th int. To which of the trustees was it given?

Ans. It was given to Mr. Bailey and myself.

13th int. What did these trustees do under that authority?

Ans. They carried out what they were authorized to do by the three trustees. It was an authority to sign checks and make deposits for the three trustees in Mr. Ruggles' absence.

14th int. What property have you received from the trust-estate and applied to your own use and benefit?

Ans. The sum that I advanced to the firm, namely, $25,000, which was advanced to me by the trustees from my mother's estate, and put into the business. The trustees have paid other bills for me. I cannot give an exact answer how much, but the books will show.

15th int. What amounts per annum have you been thus paid?

Ans. I could not tell from memory.

16th int. Has the income of one-third of the estate been thus paid?

Ans. I should say generally that it had.

17th int. Can you not recollect about the amount thus paid the last year, or two years, or three years?

Ans. No, sir; I cannot. It varied a good deal. When I went to Europe the trustees paid my expenses. I went to Europe in October, 1867, and returned in April, 1868.

240 18th int. When was the last payment made to you or by you on your own account?

Ans. It was during the last week—last Saturday, I think.

19th int. Do you mean to be understood to say that you have not any recollection of the amount paid by the trustees or by yourself on your account within the last year?

Ans. I cannot state from memory now.

20th int. Have you any written statement of the expenditures made for your benefit by the trustees, or any of them?

Ans. I have not; no, sir.

21st int. Will you furnish in writing a statement of the money or other property received by you or applied by the trustees, or any of them, out of said trust property for your use or benefit, giving the amount and date of such appropriation?

The further examination of the witness is adjourned, on motion of the petitioner, to Saturday morning next, May 1st, 1869.

SATURDAY MORNING, *May 1st*, 1869.

Examination resumed. Mr. Eaton proposes to add the following additions and explanations to his previous answers:

I wish to add to my answer to the 5th interrogatory:

The capital of $25,000 which I stated as furnished by me as capital in the firm of Bailey & Eaton, was not furnished at the commencement of the business, but several months after the death of my mother. At the commencement of the business the firm had no actual capital, but had a credit at the Old National Bank, formerly the National Bank, given to them by the guarantee of my mother and William M. Bailey, on which the bank discounted the paper of the firm without other security. The endorsements of William M. Bailey and James Y. Smith of the notes of the firm commenced after the death of my mother in 1864.

I wish to add in my answer to the 14th interrogatory:

241 The bills which I stated were paid for me by the trustees were paid prior to my petition in bankruptcy. I call it a payment by the trustees, because I had authority from the trustees to draw checks. When so paid I charged myself as debtor to so much cash on the estate-books as received from my portion of the income.

I wish to add to my answer to the 18th interrogatory:

Such payment was on account of the trust-estate. The money was drawn by me from the Old National Bank, to wit, seventy-five dollars, fifty dollars of which I paid for labor performed on the new street on the trust-estate, and fifteen dollars for pasturage of stock belonging to the trust-estate. The remaining three dollars I hold for account of the trust-estate.

I wish to add to my answer to the 20th interrogatory:

Except upon the estate-books before referred to.

Answer to the 21st interrogatory:

I supposed the register had taken down an answer from me assenting to the request to furnish such statement. The interrogatory not specifying from what time such statement was desired, I have prepared and annex a statement from the failure of Bailey & Eaton, March 1st, 1867, to the date of my petition in bankruptcy. Since the date of my petition in bankruptcy I have received no payments or money from the trustees, or any of them, for my individual use as a beneficiary of the trust-estate. I have had the principal charge of said estate as one of the trustees, and I have used the moneys of said estate for the improvement of the same. What I have expended on myself I have charged myself with as owing to the estate, and I am accountable to the estate for the same. The trustees are now developing and improving the estate, and it occupies most of my time and attention.

My answer to this interrogatory is contained in my statement, Exhibit G, herewith produced.

(Mr. Bradley objects to this answer as insufficient in point of time, covering but a portion of the time inquired about.)

242 22d int. Please annex a further statement of moneys received by you or expended by the trustees, or any of them, out of the trust-estate on your behalf, or for your use and benefit, from the origin of the trust to the present time.

Ans. I will.

23d int. Explain the items called "interest" in Exhibit G.

Ans. They are principally for interest charged me on the estate-books on the $25,000 advancement made to me.

24th int. Has any written authority ever been executed by the trustees to any of their number except Exhibit F?

Ans. No, sir.

25th int. Has there ever been any agreement in writing between the trustees and yourself in regard to the income of the estate, or any portion of it?

Ans. No, sir.

26th int. Has there been any agreement or writing of any kind in regard to your management of said estate, or any part of it?

Ans. No, sir.

27th int. Has there ever been an agreement not in writing in regard to the income of said estate received by you?

Ans. No, sir.

28th int. Please present, if not included in your answers to the previous questions, a statement of the moneys received by you from the

trust-estate; what you have done with the same since your petition in bankruptcy.

Ans. I will.

29th int. Is there an account kept between you as cestui que trust and the trust-estate; and if so, with what have you been credited in that account?

Ans. There is such an account. I have been credited with my share of the income.

30th int. Please produce a copy of the credit side of the account kept with you as such beneficiary.

Ans. I will.

31st int. By whom have the accounts of the trust-estate been kept?

Ans. By me, generally.

32d int. By whom else, and when by any one else?

Ans. By Mr. Bailey, jr., during my absence in Europe.

243 33d int. Who has received the dividends due the estate?

Ans. The trustees.

34th int. By whom personally?

Ans. They have very seldom been collected personally, and, when so collected, generally by me. During my absence in Europe the collections were made by William Bailey, jr.

Further examination adjourned by consent to Saturday next, May 8th.

Further examination adjourned to June 5th, Saturday, at the same place.

SATURDAY, *June* 5.

Examination resumed.

The petitioner, Mr. Amasa M. Eaton, exhibits two papers, marked H, in answer to interrogatories 22 and 30; also, four papers, numbered 1, 2, 3, 4, in answer to interrogatory 24. These four papers are marked I.

35th int. In answer to interrogatory 22 you say you will furnish a statement of receipts and expenditures of the trust-estate in your behalf to the present time, and, in answer to interrogatory 28, that you will furnish some since your application in bankruptcy. The accounts filed by you do not furnish such items since said application. Please complete the statement by adding such items.

Ans. My answer to this interrogatory is contained in paper marked H, which I annex.

36th int. State what sums have been received by you from the trust-estate, or expended by the other trustees on your account since your application. Give the dates and amounts of such sums and the agreements, if any, upon which they have been secured and expended.

Ans. I will do it, but must have time to obtain the desired information.

37th int. Interest is charged upon advancement of $25,000. Is it charged upon all other items of cash paid Amasa M. Eaton? Is there any credit by the estate of interest so received?

244 Ans. Interest is so charged. There is credit by the estate of interest so received, said interest going to the debit or credit of the income-account in the division of said income among the beneficiaries.

38th int. Explain the items of rent charged to you in the account.

Ans. They are for rent of the homestead where I have resided.

39th int. How are those credited?

Ans. To income-account.

40th int. Explain item April 7th, 1865, interest on bank-stocks.

Ans. At that time, when stocks were sold, they carried interest from dates of last dividend. I paid interest, or was charged interest, the same as any other purchaser would.

41st int. Explain item August 15th, 1866, joint account.

Ans. It is my share of household expenses, &c.; expenses of living.

42d int. When and by whom was the policy of life-insurance taken up?

Ans. By me, in 1866.

43d int. By whom have the premiums been paid?

Ans. At that time by me. Upon my failure the policy passed to my assignee, Charles A. Nichols. The property thus assigned was not sufficient to pay my individual indebtedness, but my brother agreed to pay such indebtedness in full, purchasing of my assignee all my property. They afterwards sold this policy to the estate, and since then the estate has paid the premiums.

Further examination adjourned to June 14th, at same place, at 11½ o'clock.

Further examination adjourned to Monday, June 21st, at same place, at 11 o'clock a. m. All rights of parties preserved by consent.

Further examination adjourned to July 12th, at same place, at 11 o'clock. All rights of parties preserved by consent.

245 Further examination adjourned to July 14th, at same place, at 11 o'clock. All rights of parties preserved by consent.

Further examination adjourned to Thursday, July 29th, 1869, at same place, at 11 o'clock. Present, Judge Bradley, Samuel Currey, Amasa M. Eaton, and William M. Bailey.

Mr. Eaton exhibits statement marked K, and also reply marked L, in answer to interrogatories 35 and 36.

The creditors give notice that they oppose the discharge, and will file their specifications within the time required by the rules.

AMASA M. EATON.

D.

Assignment of Bailey & Eaton to Charles A. Nichols, March 1st, 1867.

In answer to 7th interrogatory.

Know all men that we, William M. Bailey, jr., and Amasa M. Eaton, both of North Providence, in the county of Providence and State of Rhode Island, copartners, transacting business under the firm and style of Bailey & Eaton, in consideration of one dollar to us, as copartners as aforesaid, paid by Charles A. Nichols, of the city and county of Providence, State of Rhode Island, and of the trust hereinafter created, and by him to be performed, do hereby grant, bargain, sell, assign, transfer, convey, and confirm unto the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereby created, all the following-described estate and property, namely:

1,685 shares Union Coal and Oil Company.
1,000 shares New York and Providence Petroleum Company.
250 shares Torch Lake Mining Company.

50 shares Merchants' Union Express Company.
37½ shares East Providence Land Company.
$\frac{1}{5}$ interest in purchase Michigan mineral lands.
$\frac{3}{25}$ interest in leases of Elk River lands, West Virginia.
$\frac{1}{16}$ interest in Sterine Petroleum Well, Pennsylvania.
246 $\frac{1}{16}$ interest in schooner Gov. J. Y. Smith.
$\frac{1}{32}$ interest in schooner S. P. Hawes.

Hereby intending to convey, and hereby conveying, all our shares in the above-named corporations and companies, whatever the same may be, and also hereby conveying all our right, title, and interest in and to all the real and personal estate and property of each and all said corporations and companies, wherever the said estate and property may be.

Also, all fixtures and property in store now occupied by said firm on South Water street, in Providence, Rhode Island, and all oil, paraffine, wax, candles, and other property in any place in said city of Providence.

Also, all tanks, presses, machinery, fixtures, oils, paraffine, wax, and candles, axle-grease, barrels, casks, cans, sewing-machine oil and gun-oil, and all other property belonging to such firm situate partly in store No. 28 Canal street, in Boston, and partly in the factory estate occupied by us on Broadway, in Cambridgeport, Massachusetts, including herein all property of said firm at both said places.

Also, all oil, paraffine, wax, candles, gun-oil, sewing-machine oil, all fixtures and furniture, and all other property belonging to said firm in stores No. 32 Broadway and 75½ New street, in the city of New York.

Also, all oils, paraffine, wax, candles, gun-oil, sewing-machine oil, all fixtures and furniture, and all other property belonging to said firm in store No. 101 South Front street, and in any other store in the city of Philadelphia, Pennsylvania.

Also, all oils, merchandize, and property of every kind in transit, and wherever the same may be situate, belonging to said firm or copartnership.

To have and to hold all the same, with all privileges and appurtenances thereof, to him, the said Charles A. Nichols, his heirs, administrators, executors, and successors in the trust hereinafter declared; always in trust, however, for the use and purposes following, that is to say: in trust to take possession of all said estate and property, insure and otherwise take care of the same for the interest of those concerned; to sell and dispose of the same at public or private sale, in his
247 discretion; to execute all conveyances and other instruments requisite to carry the trusts hereby created into full effect, with full power to submit any matters to arbitration and to make any just compromise, and to collect all the proceeds of said assigned estate; and, after paying thereout all the costs, charges, and expenses of making and executing these trusts and incidental thereto, together with a reasonable compensation to our assignee for his services as such, then, out of the residue—

First. To pay out of said proceeds all sums of money due or owing from said firm to our clerks and laborers.

Second. After paying all the preceding in full, then out of the residue to pay in full all debts in anywise due or owing from our firm to William M. Bailey and James Y. Smith, or to either of them, including herein all sums of money that may become due from us to them, or either of them, by reason or in consequence of their, or either of their, being required to pay all or any part of our portion (as well as their own) of any debt or obligation where we and they are all liable. And

also all debts and paper due or owing from our said firm, on, or for which William M. Bailey and James Y. Smith, or either of them, are, or may be liable as endorsers, guarantors, or in any other manner, and to indemnify and hold harmless in every respect the said William M. Bailey and James Y. Smith of and from all the same.

Third. After paying all the preceding in full, then to apply the residue thereof ratably to the payment of such other creditors of our said firm as shall respectively make, execute, and deliver to our said assignee, on or before the second day of September, A. D. 1867, a release under seal of all their several and respective claims against our said firm.

In witness whereof the parties hereto have respectively set their hands and seals, the first day of March, one thousand eight hundred and sixty-seven.

(Signed) WM. M. BAILEY, JR. [L. S.]
AMASA M. EATON. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) WILLIAM P. MORTON.
(Signed) HENRY MARTIN.

248 THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS,
County of Providence, ss:

Be it known, in the city of Providence, in the county and State aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Henry Martin, a public notary for said county of Providence, personally appeared William M. Bailey, jr., and Amasa M. Eaton, to me personally known to be the individuals described in and who have executed the foregoing annexed instrument, and they severally acknowledge the same to be their free act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said Providence, the day and year above written.

[NOTARIAL SEAL.] (Signed) HENRY MARTIN,
Public Notary.
[Int.-rev. stamp cancelled.]

E.

Assignment Amasa M. Eaton to C. A. Nichols, March 1st, 1867.

In answer to 7th interrogatory.

Know all men that I, Amasa M. Eaton, of North Providence, State of Rhode Island, in consideration of one dollar to me paid by Charles A. Nicholas, of the city of Providence, in said State, the receipt whereof is hereby acknowledged, and in further consideration of the trusts hereinafter created and by him to be performed, do hereby grant, bargain, sell, assign, transfer, convey, and confirm unto the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereby created, all the following-described estate and property, namely:

All my right, title, and interest in and to a lot of land situate in North Providence, bounded westerly by Hardenburg street, northeasterly by the old Wenscot road, and southerly by a road running from the Douglass Pike into Hardenburg street, being the same lot conveyed to me by Sarah B. Eaton by deed dated the 30th day of December, 1862, reference thereto being had, my interest therein being one-third part.

Also, all my interest in and to one hundred and twenty-one shares of the capital stock of the Manufacturers' National Bank of Providence.

Also, all my interest in and to a certain lease of lands on Elk River, West Virginia.

Also, all my shares in the capital stock of the New York and Providence Petroleum Company of New York.

Also, all my shares in the capital stock of the New York and Chicago Petroleum Company of New York.

Also, hereby assigning and conveying all estates and property of every kind belonging to me individually, wherever the same may be situated, except such property as is exempt from attachment by law.

To have and to hold all the same, with all the privileges and appurtenances thereof, to him, the said Charles A. Nichols, his heirs, executors, administrators, and successors in the trusts hereinafter declared. Always in trust, however, for the uses and purposes following, that is to say, in trust, to take possession of all estate and property, to insure and otherwise take care of the same for the interest of those concerned, to sell and dispose of the same at public or private sale in his discretion, to execute all conveyances and other instruments requisite to carry the trusts hereby created into full effect, with full power to submit any matter to arbitration, and to make any just compromise, and collect all the proceeds of said assigned estate, and after paying thereout all the costs, charges, and expenses of making and executing these trusts and incidental thereto, together with a reasonable compensation to my assignee for his services as such, then out of the residue,

First. To pay in full all the following individual debts and obligations of mine, namely: Five certain promissory notes, all made and signed by me, and all payable to my order, and all endorsed by William M. Bailey for my accommodation, these notes being about the dates and for the amounts following, namely:

One dated October 26th, 1866, for two thousand dollars; one dated October 27th, 1866, for three thousand dollars; one dated October 31st, 1866, for fifteen hundred dollars, and one dated November 5th, 1866, for
250 three thousand dollars, and one dated November 9th, 1866, for fifteen hundred dollars, and to indemnify and save harmless William M. Bailey therefrom, and also to indemnify him and save him from any other liabilities incurred by him for me individually, or for my individual accommodation.

Second. After paying all the preceding in full, then to apply the residue thereof, ratably, to the payment of such other individual creditors of mine, and also to such creditors of the copartnership of Bailey & Eaton, as shall, respectively, make, execute, and deliver to my said assignee, on or before the second day of September, A. D. 1867, a release under seal of all their several claims against me, or against said copartnership, as the case may be.

In testimony whereof I hereunto set my hand and seal this first day of March, A. D. 1867.

(Signed) AMASA M. EATON. [L. S.]

Signed, sealed, and delivered in presence of—

(Signed) HENRY MARTIN.

(Signed) ALBERT HEWITT.

[Stamp.]

THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS,
County of Providence, ss:

Be it known that in the city of Providence, in the county and State aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Henry Martin, a public notary for said county of Providence, personally appeared Amasa M. Eaton, to me personally known to be the individual described in and who has executed the foregoing instrument, and he acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said Providence, the day and year above written.

[NOTARIAL SEAL.] (Signed) HENRY MARTIN,
Public Notary.

Recorded March 7, 1867, in North Providence, R. I., in deed-book No. 42, page 18.

Witness, (Signed) ROYAL LEE,
Town Clerk.

251 DISTRICT OF RHODE ISLAND, *sc:*

CLERK'S OFFICE, DISTRICT COURT,
At Providence, May 28th, 1872.

I, Henry Pitman, clerk of said district, do hereby certify that the foregoing nineteen pages contain a true copy of the examination of Amasa M. Eaton before Hon. W. W. Hoppin, one of the registers of said district court in bankruptcy, together with exhibits marked D and E, referred to therein, and annexed to said examination.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on the day and year above written.

[SEAL.] HENRY PITMAN, *Clerk.*

252 Said cause came on to be heard at the June term of said circuit court, A. D. 1872, upon the bill, pleadings, & proofs taken therein before Justice Nathan Clifford and Judge John P. Knowles, and was argued by the counsel of the respective parties, and held for advisement. And at the June term, 1873, of said court, the following opinion was delivered:

253 Rhode Island district, June term, 1873.

CHARLES A. NICHOLS, ASSIGNEE,
vs.
AMASA M. EATON ET AL. } In equity. Clifford & Knowles, J. J.

Opinion.

CLIFFORD, J.:

Assignees in bankruptcy are chosen by the creditors of the bankrupt, and it is made the duty of the judge, or where there is no opposing interest, of the register, by an instrument under his hand, to assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and the provision is that such assignment shall relate back to the commencement of the

proceedings in bankruptcy, and that the title to all such property and estate, both real and personal, shall by operation of law vest in said assignee; and the further provision is, that the assignee shall have like remedy to recover all said estate, debts, and effects in his own name as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. 14 Stat. at Large, 522—524.

On the first day of May, 1864, Sarah B. Eaton, of North Providence, made her last will and testament as the same is exhibited in the record. Most of the facts are admitted or not the subject of controversy, and may be stated as follows:

254 Mrs. Eaton at the date of her will was a widow, having four children, three sons and one daughter, and it is agreed that the daughter died unmarried and without children subsequent to the death of the mother and before her brother Amasa was adjudged à bankrupt. By her will, Mrs. Eaton devised her estate, real and personal, to three trustees, to pay the rents, profits, dividends, interests, and income of the trust property unto and equally among her four children for and during their respective natural lives, and after their decease in trust for such of their children as shall attain the age of twenty-one years, or shall die under that age having lawful issue living at his, her, or their decease, and his, her, or their heirs and assigns, if more than one, as tenants in common, subject to the condition that "if any of my said children shall die without leaving any child who shall survive me, and shall attain the age of twenty-one years, or die under that age leaving lawful issue living at his or her decease, then as to the share or respective shares, as well original as accruing, of such child or children respectively, upon the trusts herein declared concerning the other share or respective shares." Claim is made by the complainant as assignee in bankruptcy of Amasa M. Eaton, one of the sons of the testatrix, to his share of the rents, profits, dividends, interest, and income of the trust-estate within the control of the trustees named in the will. Amasa was a member of the firm of Bailey & Eaton, and it is admitted that the firm, on the first of March, 1867, became insolvent, and that they made an assignment of their property to the complainant, and it appears that Amasa, on the same day, made an assignment of all his individual property to the same party for the benefit of his creditors, and that he, on the 24th of December following, was adjudged a bankrupt, and that the complainant was duly appointed his assignee as alleged in the bill of complaint.

Prior to that decree there is no question that he was entitled to one-fourth of the income of the trust-estate, until the death of his sister, and that subsequently to the decree in bankruptcy he was entitled to one-third of the income, as it is admitted that she was never married, and that she died childless.

Assignees in bankruptcy, except in cases of fraud, take only such rights and interests as the bankrupt had and could himself claim
255 and assert at the time of the bankruptcy, and they are affected with all the equities which would affect the bankrupt himself if he were asserting those rights and interests. Mitchell v. Winslow et al., 2 Story, 637; Brown v. Heathcote, 1 Atk. R., 162; Mitford v. Mitford, 9 Ves, 100; 1 Jarman on W., 816; Hall v. Gill, 10 Gill & J., 325.

Much discussion of that proposition is unnecessary, as it is conceded by both parties and is supported by the highest authority. Tested by that rule the question is, whether the bankrupt, at the date of filing his petition in bankruptcy, had any vested interest in the estate of his mother under her will, which must depend upon the construction of the

principal proviso, to which reference will now be made. It is as follows: "Provided, also, that if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts, or if by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same, or any part thereof, shall, or but for this present provision would, belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or so much thereof as should or would have so become vested in or payable to any other person or persons other than my said sons respectively, as aforesaid, shall immediately thereupon cease and determine, and the said income shall be applied by my said trustees during all the then residue of the life of my said sons respectively, in manner following, that is to say, upon trust to pay and apply the said income, or such part thereof as aforesaid, to and for the support and maintenance, or otherwise for the use and benefit, of the wife, child, or children for the time being of my said sons respectively, or such one or more of such wives, child or children, and in such manner as my said trustees in their discretion shall think proper, and as to such wife for her sole and separate and inalienable use; and in default of any object of the last-mentioned trust, at any period during the life of my said sons respectively, and when and so often as the same shall happen, then upon trust from time to time, so long as such vacancy or want of objects shall
256 continue to accumulate, and invest the income aforesaid, in augmentation of the principal or capital thereof, in the nature of compound interest, with power of changing investments as hereinbefore expressed; and in case at any time such accumulation shall cease to be lawful, then upon trust to apply the said annual produce and income, or such part thereof as may not legally be accumulated during said want of objects as aforesaid, in such and the like manner as the same would be applicable under the ulterior trust of this my will." Fraud cannot be imputed to the testatrix, as the estate was her own, which she was at liberty to give or not to her children as she saw fit; and, inasmuch as the bankrupt never had any interest in it other than what is devised to him by the will, it is clear that his assignee acquired nothing by virtue of the assignment, except the interest which vested in the debtor at the time he filed his petition in bankruptcy. Nothing certainly vested in him except what was devised, and the nature and extent of the devise must be controlled by the intent of the testatrix as expressed in the will, unless the intent is one in violation of law. Apply that rule to the case, and it is as clear as anything can be that the estate devised to the son, in the income of the trust-fund, ceased and was determined at the bankruptcy of the devisee. No other conclusion can be reached, as the testatrix so declares in express words, and she further provides an entirely new direction for such share of the income, giving it to the wife or wives of such son or sons in the discretion of the trustees, empowering them, if they see fit, to exclude from any share of such income the wife and children of any such bankrupt son, and if those objects of the trust should fail, the provision is that such portion of the income shall go to the trustees to accumulate as a portion of the ulterior trust of the will.

Such a provision in a will is valid, as is settled by numerous authorities not open to question. Brandon v. Robinson, 18 Ves., 433; Cooper v. Wyatt et al., 5 Madd. Ch. R., 297; Rockford v. Hardeman, 10 Eng. L. & Eq., 67; 2d Story, Eq., see 974 and p. 285.

Cases may be found, undoubtedly, where doubts have been expressed, whether the provision that the estate shall be determined by the
257 bankruptcy of the legatee is sufficient to accomplish the object, unless the will goes further and provides for the future disposition of the estate; but no such question arises in the case before the court, as the will contains a provision which entirely obviates the force of any such suggestion.

Satisfactory explanations upon this point will be found in the case of Bradford v. Hardeman, 10 Eng. L. & Eq., 67, to which reference is made for the purpose.

Where trustees under a will have a discretion as to the manner of the application of the trust-fund for the benefit of a particular person, but no power to apply it otherwise than for his benefit during his life, his interest in case of bankruptcy passes to his assignee; but the case before the court is entirely of a different character, as his life-estate is expressly determined by the act of bankruptcy, and the trustees are expressly empowered to make a different disposition of the income, showing that the case is controlled by the general rule established by the prior authorities, Green v. Spicer, 1 Russ & Mylne, 395.

Enough has been remarked to show that it was the intent of the testatrix that the life-interest given to the son should cease and be determined by his bankruptcy; but the complainant contends that the provisions of the will are insufficient to prevent the estate from vesting in the bankrupt and from passing from him to his assignee, for two reasons, which deserve a separate consideration.

1. Because, as he contends, "there is no limitation over to any other person of the trust-income of the bankrupt, accumulating during his life in the absence of wife or children." But such, in the judgment of the court, is not the effect of the limitation expressed in the will. On the contrary, it does pass the income from the bankrupt into the control of the trustees for the benefit, at the trustees' discretion, of the wife or children of one or more of the sons; and if those objects fail, the trustees are expressly required to retain the income to accumulate and pass, after the death of the sons, under the ulterior trusts of the will. Nothing is to go to the bankrupt under the provision in any event, nor is he to acquire any right to any portion of the same, but he is absolutely barred therefrom by the express words of the clause.

2. Concede that, still it is contended by the complainant that the discretionary clause, subsequently found in the will, vests in
258 the bankrupt some interest in or claim to a portion of the income of the trust-estate, which by operation of law passed to his assignee under the instrument of assignment executed agreeably to the 14th section of the bankrupt act. By that clause it is declared that it shall be lawful for the trustees in their discretion, but without its being in any manner obligatory upon them, in case at any future period circumstances should exist which in their opinion should justify or render expedient the placing at the disposal of the donees respectively any portion of the real and personal estate, to transfer absolutely to them respectively for his or her own proper use and benefit any portion, not exceeding one-half of the trust-fund, from whence his or her share of the income under the preceding trusts shall accrue, and immediately upon such transfer being made, the trusts hereinbefore declared concerning so much of the trust-fund shall absolutely cease and determine. Appended to that clause, also, is the following provision: "And in case after the cessation of said income as to my said sons respectively, otherwise

than by death, as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons respectively would have been entitled under the preceding trusts, in case the forfeiture hereinbefore provided for had not happened." Obviously in construing that provision, it must be assumed throughout, that all the rights which the bankrupt had before that time enjoyed under the will, were determined by the bankruptcy. All such rights being determined, the only question is, whether he acquired any new rights under that clause, or, in other words, whether the clause vested in the bankrupt any property-interest in the income of the trust-fund. Carefully examined, the language found in the will is very precise and expressive in its legal effect, so much so that it may be said to speak of its own construction. It is as follows: "In case after the cessation of said income as to my said sons respectively, otherwise than by death, as hereinbefore provided for, it shall be lawful for my said trustees in their discretion, but without its being obligatory upon them, to pay or apply for the use of my said
259 sons respectively, or for the use of such of my said sons and his wife and family, so much and such parts of the income to which my said sons respectively would have been entitled under the preceding trusts, in case the forfeiture hereinbefore provided for had not happened." Under that clause no right whatever vested in the bankrupt to any portion of the income which he could enforce in any court of law or equity. Such a claim cannot be recognized by any court, as the property is held by the trustees under the limitations in case of bankruptcy provided in the antecedent clause, and could not pass under those limitations unless some portion of it was paid to, or applied for, the use of the bankrupt or his wife and children by the trustees in there discretion, it being expressly declared by the testatrix that no obligation is imposed upon the trustees to pay any sums to him or them, or to apply a dollar in that direction, the provision being that it is lawful in the contingency described for the trustees to do so, but without its being obligatory, showing that it is a mere naked power in the trustees, which vested nothing either in the bankrupt or his wife and children which either he or they could enforce under any circumstances. Courts cannot adjudge under that language that such an appropriation is obligatory, that by it the trustees are compellable to allow a portion of the fund for the use of the bankrupt or his wife and children, as the will provides that it shall not be obligatory upon them to make any such appropriation, and it is not competent for the court to alter the will or to make a new one for the decedent.

Properly construed it is clear that these words confer upon the trustees a power to be exercised or not in their discretion, and one which if exercised exonerates them from liability for not applying such portion of the income under the limitations declared in the antecedent clause; but it is equally clear that the limitations declared in the prior clause must control their action in respect to the whole fund, unless some portion of it is withdrawn from those limitations by the exercise of that discretionary power.

Different rules apply where an absolute trust is created for the benefit of a party, his wife and family, but a discretion is vested in the trustees as to the time and manner of executing the same, or of apportion-
260 ing the amount among the beneficiaries entitled to receive the income or fund, as it is well held in that class of cases that a right

of property vests in the bankrupt beneficiary, and that such right of property will pass to his assignee. Such a party is entitled to something, and having a valid claim for it, his interest passes by the instrument of assignment; but in the present case the bankrupt is not entitled to anything as matter of right, as the power to grant or withhold rests entirely in the discretion of trustees. They may give or withhold, in their discretion, and if they refuse to pay anything, or to apply any portion of the fund to such a use, neither the bankrupt nor his wife and children have any claim upon them for the income or for any damages for refusing to exercise the power. Perry vs. Trusts, 453, 454.

Property in trust, it is conceded, may not pass to an assignee in bankruptcy in a case where the will provides that in that event there shall be an absolute cesser of the bankrupt's interest, if the will contains a provision that his interest shall in that event vest in some other person. Tillinghast v. Bradford, 5 R. I., 205; Dommet v. Bedford, 3 Ves., 149; Joel v. Mills, 3 K. & J., 458; Rockford v. Hackman, 9 Hare, 475.

But the complainant insists that where property is left upon such a discretion as exists in the will under consideration, it passes to the assignee in bankruptcy. Provisions of various kinds have been framed by conveyancers to effect such an object as that contemplated by the testatrix in this case. That is, that the trusts expressed in the will respecting the income of the life-estate shall cease and determine by reason of the bankruptcy of the beneficiary or donee, and a learned author expresses the opinion that the only mode of effectuating the object often anxiously entertained by donors, of securing the corpus of the property against the acts of the donee himself and the claims of his creditors, is to invest a third person with a discretionary power either to give or withhold it as he may think best; in short, to defer absolutely all proprietary interest in the intended object of bounty until its application to his use, by the testator's nominee, and ultimately to give to another what remains so unapplied at the decease of the devisor. Evidently every one of these conditions were adopted in the will in question to the very letter, and it is equally clear that the defence is fully supported by that authority. Hays & Jarman on Wills, (7th ed.,) 199.

261 Forms for such a provision in a will are given by conveyancers of the highest repute, and those forms have the sanction of a learned annotator. 11 Bythewood's Conveyancing, 713, 3d ed.

Exactly the same views are expressed by Mr. Jarman in his work on Wills, in which he says: "The vesting in trustees of a discretion as to the mode in which income is to be applied for the benefit of a cestui que trust does not take it out of the operation of bankruptcy or insolvency, to effect which the discretion of the trustees must extend not merely to the manner of applying the income for the benefit of the cestui que trust, but also to the enabling them to apply it either for his own benefit, or for some other purpose." 1 Jarman on Wills, (2d Am. ed.,) 821.

By making the payment of an annuity depend upon the discretion or will of a third person, says Mr. Atherly, no disposition can be made of it, nor can it be come at by creditors, either at law or in equity, but then the payment of the annuity, depending upon the mere pleasure of the trustee, the cestui que trust has no certain ascertained interest in it, which is the exact description of the case before the court. (Atherly on Marriage Settlements, 333.) Opposed to these views are the remarks of the annotator in Hayes & Jarmin on Wills, in which he says, "that, according to a recent case, in order to exclude the claim of the assignees in bankruptcy, the power should be made incapable of being exercised in favor of the bankrupt after such event; or, in other words, the prop-

erty should in bankruptcy be absolutely given over to another in like manner as at death." Reference is made to the case of Piercy v. Roberts, 1 M. & K., 4, as authority for the doctrine, but the case cited, in the judgment of the court, affords no support whatever to the views expressed by the annotator. In that case £400 were devised in trust to the executors to apply and dispose of, for the sole use and benefit of the son of the testatrix in such manner as the executors should, in their discretion, think best; and in the case of the death of the son before the whole fund was exhausted, the balance not applied was to become a part of the residuary estate of the testatrix. Insolvency of the son followed before the sum was applied to his use, and the master of the rolls held that the bankruptcy of the son terminated the discretion of the
262 executors, and that the unapplied balance vested in the assignee.

Later cases, such as Twopenny v. Peyton, 10 Simons, 487, Wallace v. Anderson, 16 Beavan, 536, seem to deny that the discretion of the trustees ceases in all cases of bankruptcy; but it is not necessary to decide that point in the present case, as the provisions of the will in question differ widely from the clause under revision in the case of Piercy v. Roberts, where it is clear there was an absolute trust established by the will in favor of the son, and the only discretion vested in the executors was as to the amount they should apply, and the time and manner of directing the application. Perry notices this distinction in his valuable work on trusts; nor is there anything in the case of Piercy v. Roberts, which affords any countenance whatever to the proposition that the trustees must be made incapable of exercising the discretion in favor of the bankrupt in order to prevent the fund from passing to the assignee so long as the power conferred is a mere discretionary power, to be exercised or not, as they shall see fit, and it is clear that such a mere naked power does not carry with it any vested right in the donee which can be enforced in a court of law or equity.

Attempt was made to show that the trustees, in the exercise of their discretion, had applied a certain portion of the life interest of the trust-fund for the use of the bankrupt legatee, and the argument is that such portion of that fund as was not expended at the time the petition in bankruptcy was filed, passed to the assignee; but the court is of the opinion that the proofs do not sustain the proposition that anything so applied remained unexpended when the petition in bankruptcy was filed, which is all that need be remarked in answer to that suggestion.

Other propositions were discussed at the bar, but having determined that the bankrupt had no estate which could pass to his assignee, it is not necessary to examine the other issues between the parties.

The bill of complaint is dismissed with costs.

HORATIO ROGERS,
CHA'S S. BRADLEY,
For Complainants.
SAM'L CURREY,
BENJ. R. CURTIS,
For Respondents.

263 Whereupon the following decree was entered:

Final decree.

This cause came on to be heard at the June term of this court, A. D. 1872, and was argued by counsel; and now, to wit, on the seventh day of the June term of this court, A. D. 1873, (being the 24 day of June, A. D. 1873,) it is thereupon upon consideration thereof ordered, adjudged,

and decreed by the court that the complainant's said bill of complaint be dismissed with costs for the defendants.

Entered as the decree of this court, per order thereof, this 24th day of June, A. D. 1873.

HENRY PITMAN, *Clerk.*

From which decree the complainant, on the same day, in open court, prayed an appeal to the Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October, A. D. 1873, which said appeal was allowed, and the following bond was thereafterwards filed:

264 *Appeal-bond.—Filed July* 8, 1873.

Know all men by these presents that we, Charles A. Nichols, of the city of Providence, in the county of Providence and State of Rhode Island, as principal, and James Y. Smith & Horatio Rogers, both of the same place as sureties, are held & firmly bound unto Amasa M. Eaton, William M. Bailey, and George B. Ruggles, in the sum of one thousand dollars, to be paid to the said Amasa M. Eaton, William M. Bailey, and George B. Ruggles, their executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly & severally, firmly by these presents, sealed with our seals and dated this seventh day of July, in the year of our Lord eighteen hundred and seventy-three.

Whereas at a circuit court of the United States for the district of Rhode Island, in the first circuit, held at Providence, in said district, on the 24 day of June, A. D. 1873, in a suit in equity depending in said court between Charles A. Nichols, as assignee in bankruptcy of Amasa M. Eaton, complainant, and said Amasa M. Eaton; and also the said William M. Bailey, Amasa M. Eaton, and George B. Ruggles, as trustees under the last will and testament of Sarah B. Eaton, deceased,
265 defendants, the final decree of said court was rendered, whereby the bill of complaint was dismissed with costs; and the said Charles A. Nichols, complainant, thereupon at the same term of said court at which said decree was rendered, (to wit, on the 24 day of June, A. D. 1873,) and in open court, prayed an appeal from said decree to the Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October, A. D. 1873, and the said appeal was allowed by said circuit court: Now, the condition of the above obligation is such that if the said Charles A. Nichols, complainant, shall prosecute his said appeal to effect, & answer all damages & costs if he fail to make his plea & appeal good, then this obligation to be void; otherwise to remain in full force and effect.

CHARLES A. NICHOLS. [L. S.]
JAMES Y. SMITH. [L. S.]
HORATIO ROGERS. [L. S.]

266 Sworn to this 7 day of July, A. D. 1873, before me.

JAMES H. PARSONS,
U. S. Com'r for the Dist. of R. I.

Approved July 7, 1873.

JOHN P. KNOWLES,
District Judge.

UNITED STATES OF AMERICA,
District of Rhode Island, in the First Circuit:

Charles A. Nichols, James Y. Smith, and Horatio Rogers, being duly sworn, depose & say, & each for himself says, that he is worth the sum of two thousand dollars over & above his just debts and liabilities & property exempt by law from execution.

CHARLES A. NICHOLS.
JAMES Y. SMITH.
HORATIO ROGERS.

Sworn to this 7 day of July, A. D. 1873, before me.

JAMES H. PARSONS,
U. S. Com'r for Dist. of Rhode Island.

267 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE CIRCUIT COURT,
At Providence, Sept. 1st, 1873.

I, Henry Pitman, clerk of said court for the first circuit & district of Rhode Island, do hereby certify that the foregoing two hundred and sixty-six printed and written pages contain a true copy from the record of said court of the cause in equity, Charles A. Nichols, assignee, v. Amasa M. Eaton et al., and all the proceedings therein.

In testimony whereof I have hereunto set my hand and the seal of said court on the day and year above written.

HENRY PITMAN, *Clerk.*

(Indorsement on cover:) No. 220. Charles A. Nichols, assignee of Amasa M. Eaton, a bankrupt, appellant, vs. Amasa M. Eaton, William M. Baily, and George B. Ruggles. Rhode Island C. C. U. S. Filed 10th October, 1873.

DEFENDANTS' BRIEF.

Supreme Court of the United States.

NO. 220.

Charles A. Nichols, Assignee of Amasa M. Eaton, a Bankrupt, Appellant,

vs.

Amasa M. Eaton, William M. Bailey, and George B. Ruggles.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

PAWTUCKET:
NICKERSON & SIBLEY, BOOK AND JOB PRINTERS.
1875.

Supreme Court of the United States.

NO. 220.

IN EQUITY.

CHAS. A. NICHOLS, ASSIGNEE OF AMASA M. EATON, A BANKRUPT, APPELLANT,

vs.

AMASA M. EATON, WILLIAM M. BAILEY, AND GEORGE B. RUGGLES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

DEFENDANTS' BRIEF.

This is a suit brought by the complainant as Assignee in Bankruptcy of Amasa M. Eaton, to enforce a claim to certain supposed interests alleged to have belonged to said Amasa, in the estate of his mother, Mrs. Sarah B. Eaton, and which complainant alleges are now vested in him as Assignee in Bankruptcy.

The material portions of Mrs. Eaton's will under which these claims are made are as follows:

"I declare and direct that my said trustees shall stand and be possessed of, and interested in my said real and personal estate, and the investments aforesaid, (subject to the preceding powers and provisions) upon the trusts hereinafter expressed and declared; that is to say, upon trust, from time to time

to pay the rents, profits, dividends, interest and income of the said trust premises, unto and equally among my four children, George Benjamin Ruggles, Amasa Mason Eaton, Charles Frederick Eaton, and Anna Grosvenor Eaton, for, and during their respective natural lives, and after their respective deceases, either before or after my decease, then upon trust for such of the children of my said children respectively as shall attain the age, or respective ages of 21 years, or shall die under that age, leaving lawful issue living at his, her or their decease, or respective deceases, and his, her or their heirs and assigns forever, if more than one, as tenants in common; but so nevertheless that the respective child or children of each of my said children shall have his, her or their parent's shares only; and if any of my said children should die without leaving any child who shall survive me, and shall attain the age of 21 years, or die under that age leaving lawful issue, living at his or her decease, then as to the share or respective shares as well original as accruing, of such child or children respectively, upon the trusts herein declared, concerning the other share or respective shares; and as to all the said trust premises in case of the failure of all the limitations or objects of the preceding trusts in trust for my own right heirs forever.

* * * * * * *

Provided also, that if my said sons respectively should alienate or dispose of the income to which they are respectively entitled under the preceding trusts; or if by reason of the bankruptcy or insolvency of my said sons respectively, or by any other means whatsoever, the said income can no longer be personally enjoyed by my said sons respectively, but the same or any part thereof, shall, or but for this present provision would belong to or become vested in or payable to some other person or persons, then the trusts hereinbefore expressed concerning the said income, or concerning so much thereof as should or would have so become vested in or payable to any other person or persons other than my said sons respectively as aforesaid, shall immediately thereupon cease and determine; and the same income shall be applied by my

said trustees during all the then residue of the life of my said sons respectively in manner following: that is to say, upon trust, to pay and apply the said income or such part thereof as aforesaid to and for the support and maintenance or otherwise for the use and benefit of the wife, child or children, for the time being, of my said sons respectively, or such one or more of such wife, child or children, and in such manner as my said trustees in their discretion shall think proper, and as to such wife for her sole and separate and inalienable use; and in default of any object of the last mentioned trust at any period during the life of my said sons respectively, and when and so often as the same shall happen, then, upon trust from time to time, so long as such vacancy or want of objects shall continue to accumulate and invest the income aforesaid in augmentation of the principal or capital thereof in the nature of compound interest, with power of changing investments as hereinbefore expressed; and in case at any time such accumulation should cease to be lawful, then, upon trust, to apply the said annual produce and income, or such part thereof as may not legally be accumulated during said want of objects as aforesaid, in such and the like manner as the same would be applicable under the ulterior trust of this my will.

Provided also, that in case at any future period circumstances should exist which in the opinion of my said trustees should justify or render expedient the placing at the disposal of my said children, respectively, any portion of my said real and personal estate, then it shall be lawful for my said trustees, in their discretion, but without its being in any manner obligatory upon them, to transfer absolutely to my said children respectively for his or her own proper use and benefit, any portion not exceeding one-half of the trust fund from whence his or her share of the income under the preceding trusts shall arise; and immediately upon such transfer being made, the trusts hereinbefore declared concerning so much of the trust fund as shall be so transferred shall absolutely cease and determine; and in case after the cessation of said income as to my said sons respectively, otherwise

than by death as hereinbefore provided for, it shall be lawful for my said trustees, in their discretion, but without its being obligatory upon them to pay to or apply for the use of my said sons respectively, or for the use of such of my said sons and his wife and family, so much and such part of the income to which my said sons respectively would have been entitled under the preceding trusts in case the forfeiture hereinbefore provided for had not happened."

It is admitted that Amasa M. Eaton became insolvent and made an assignment of all his individual property to the complainant, March 1st, 1867, and that on the same day, the firm of Bailey & Eaton, of which said Amasa was a member, also made an assignment for the benefit of creditors, to the complainant. Also that said Amasa filed his petition in bankruptcy, December 24, 1868, and was duly adjudged a bankrupt, complainant being appointed assignee of his estate. It is also admitted that Anna G. Eaton, sister of said Amasa, died after her mother, unmarried and childless.

It is clear that the assignee in bankruptcy can take only what was vested in the debtor at the date of filing his petition.

1 Benedict D. C. 407; In re Patterson 6 Int. Rev. Rec. 157; Carleton v. Leighton, 3 Meriv. 667; Mitchell v. Winslow, 2 Story's C. C. R., 630; 1 Jarman on Wills, 816; Hall v. Gill, 10 Gill and J. 325; In re Barret, 2 N. B. R. 165; Brown v. Heathcote, 1st Atk. R., p. 162; Mitford v. Mitford, 9 Vesey, p. 100.

The question then is whether, under the will of Mrs. Eaton, her son Amasa had, at the date of filing his petition in bankruptcy, any vested interest in her estate which could pass to his assignee.

Prior to his bankruptcy there is no question but that he was entitled to one-fourth of the income of the trust estate until the death of his sister, and after that time to one-third of such income until his bankruptcy. To this he had an absolute right, so long as he did not attempt to alienate or dis-

pose of his share of the income, but upon the occurrence of either of these events the will provides that the trust in his favor should immediately cease and determine, and that thereafter the income should be devoted to other trusts.

The intention of the testratrix is manifest that upon the happening of any of the contingencies mentioned, Amasa M. Eaton should have a right to claim nothing further from her estate, and that his creditors should be unable to resort to it for the satisfaction of their claims. This she had a perfect right to do. The estate was hers, and she could limit her bounty to her devisees as she saw fit. The limitations she imposed work no fraud upon his creditors. They are deprived of no interest in her estate, for they never had any. If they choose to trust a devisee without ascertaining what his interest actually is, they do it at their peril.

Such provisions for the cesser of income upon alienation or upon the bankruptcy of the cestui que trust are unquestionably valid.

Tillinghast v. Bradford, 5th R. I. 205; Dommett v. Bedford, 3 Ves. 149; Brandon v. Robinson, 18 Ves. 429; Joel v. Mills, 3 K. & J. 458; Rochford v. Hackman, 9 Hare 475; Cooper v. Wyatt et als., 5 Madd. Ch. R. 297; 2d Story Eq., see 974 and p. 285; Rockford v. Hardeman, 10 Eng. L. and Eq. 67.

But complainant contends that there are interests vested in Amasa M. Eaton under his mother's will which are not affected by the provisions for the cesser of income, and that these provisions themselves are for various reasons inoperative and void, and that the trustees under the will have so conducted themselves in the exercise of the discretionary powers vested in them as to be equitably bound to assign part at least of the trust estate to complainant for the benefit of creditors.

The positions he assumes in his bill, we understand to be in substance, as follows:

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The positions he assumes in his bill, we understand to be in substance, as follows:

1. That the legal and equitable estates of Amasa M. Eaton in the estates devised in said will passed by his individual and partnership assignments to complainant, and having revested in said Amasa upon the performance of the trusts of these assignments were again vested in complainant as assignee in bankruptcy.

2. That on the death of Anna G. Eaton, "the estate devised beneficially to her in said will" vested in equal shares in the three surviving children of Mrs. Eaton, of whom Amasa was one, and that he has also a contingent interest in the shares of said estate bequeathed in said will to his brothers George and Charles.

3. That there is in the will no limitations over of the sons' interest in the income upon the event of alienation or insolvency, except so far as it may be given to the wife or children of said son,—that Amasa has neither wife nor child, and that the limitation over is therefore void.

4. That "the interest in the accumulation of income directed to be made in default of wife or children or after the decease of said son is not vested during or at the end of any specified life or lives in being, or within the certain number of years thereafter, as by law required, nor is the said accumulation and all interest therein vested as by law required by any limitations over of the same, as no ulterior trusts or other disposition of such accumulations have been declared or created in said will,"—and that in the absence of such specific determination of such accumulation, and in the absence of any limitation over of any interest therein, the interest of said Amasa in said income has become vested in complainant as assignee.

5. That the discretionary powers vested in the trustees purport to vest in them a discretion to pay one-half of one-third of the trust estate, and the income of one-third to Amasa M. Eaton after insolvency, to the exclusion of any wife or children he might have, and give them no discretion to pay the same to any one else, and that such provisions are in fraud of the policy of the law, and void.

6. That this discretion attempted to be vested in the trustees to enable them to pay over the income and part of the principal to a son after bankruptcy controls the former limitation over to the wife and children of said son, and that the limitation over is nugatory and void.

7. That the trustees have attempted to exercise this discretion by paying over the income of one-third of the trust estate to Amasa M. Eaton, and in pledging and conveying part of the principal of the estate to him, and that complainant is therefore entitled to a decree requiring this discretion to be fully and further exercised for the benefit of creditors.

8. That the defendant Ruggles is not accustomed to transact business, and is incompetent to perform the duties of said trust, and though nominally accepting the office, has not in fact attempted to perform the duties of it, but has left the whole management of the trust in the hands of the other trustees. That the firm of Bailey & Eaton, of which said Amasa was a member, had little capital, and that after the death of Mrs. Eaton until their insolvency their business was mainly carried on in capital obtained by the discount of notes endorsed by W. M. Bailey, one of the trustees, and one J. Y. Smith,—that the endorsements of the latter were without consideration, and obtained on the representation of said Bailey and said Amasa M. Eaton that the latter had an equal one-third share of his mother's estate, which was sufficient to meet all the obligations which said Smith endorsed, and that the property should be applied to meet the liabilities so endorsed,—that he relied upon those representations in making these endorsements,—and that by reason of these representations the trustees are equitably bound to advance to the complainant as assignee, a sum sufficient to meet these liabilities.

We propose to consider separately the points above raised.

1. As to the effect of the individual and partnership assignments of Amasa M. Eaton.

We contend that neither of them passed any interest which he had under his mother's will. As to the partnership assign-

ment there is not even a general clause which can be made to cover such an interest. In the individual assignment no specific mention is made of such an interest, and if it is included at all, it must be by force of the following general clause: "Also hereby assigning and conveying all estates and property of every kind belonging to me individually, wherever the same may be situated, except such property as is exempt from attachment by law." The only other property named in the instrument consisted of real estate and stocks. This general clause must therefore, by a well settled rule of construction, if it enlarges the operation of a prior grant at all, extend it only to property *ejusdem generis;* property of a like character to that already enumerated, and cannot properly be construed as covering an equitable interest in a trust estate. (Webster v. Cooper, 14 How. 500; Moore v. Magrath, 1 Cowp. 12.) So important an interest could hardly have escaped the mind of the grantor, and if he intended to convey it, he would have said so plainly.

But the will provides that upon any attempt to alienate or dispose of the income of the trust estate by any of the sons, his right shall cease, these acts having the same effect as bankruptcy. If therefore this equitable interest was within the terms of the assignment, it was terminated by the attempt to alienate it. The law will not presume a construction attended with such results, and it has accordingly been held that general words in an assignment will not be construed to include an estate if a forfeiture of the estate would be thereby produced.

Re Waley's Trustee, 3 Eq. R. 380.

But if any interest in Mrs. Eaton's estate did pass by the assignment, it has been sold to George B. Ruggles and Charles F. Eaton, and consequently has not revested in the complainant.

The record shows that after Amasa M. Eaton's assignment, his brothers agreed to purchase all the individually assigned property, and pay all his individual indebtedness in full,—that

in pursuance of this agreement the real estate was deeded to them, and the personal property sold by said Amasa as their agent, the proceeds being applied to the payment of his individual indebtedness,—but that a full conveyance of all the interests covered by the assignment was prevented only by the illness of Mr. Potter, their counsel.

A. M. Eaton's testimony, Int. 20, p. 104, and pp. 144, 145, 146, 147.

And see correction of the witness by himself, pp. 151 and 152:

"I wish to add in my answer to the 14th interrogatory (p. 151) that the bills which I stated were paid for me by the trustees were paid prior to my petition in bankruptcy. I call it a payment by the trustees, because I had authority from the trustees to draw checks. When so paid, I charged myself as debtor to so much cash on the estate book as received from my portion of the income.

I wish to add to my answer to the 18th interrogatory (p. 151): Such payment was on account of the trust estate. The money was drawn by me from the Old National Bank, to wit, seventy-five dollars,—fifty dollars of which I paid for labor performed on the new street on the trust estate, and fifteen dollars for pasturage of stock belonging to the trust estate. The remaining three dollars I hold for the account of the trust estate."

C. F. Eaton's testimony, Int. 3, p. 141.

W. M. Bailey's testimony, Int. 1, p. 149.

Having assumed the burden of paying these debts, they are equitably entitled to a conveyance of everything covered by the assignment, this being the consideration for which they entered into the arrangement.

2. As to the share of Anna G. Eaton and the contingent interest which it is claimed Amasa M. Eaton has in his brothers' shares.

If we understand the complainant's position correctly it is that Amasa M. Eaton's proportion of his sister's share vested in him absolutely on her death, and that this as well as the alleged contingent interest in the brothers' shares is not affected by the subsequent provision for the cesser of income in the event of bankruptcy, &c.

Had the will contained no directions as to the disposition of the income on the death of a child, this position as to Anna G. Eaton's share might perhaps be maintained, but the testatrix has prescribed clearly that upon the death of a child under twenty-one or over twenty-one, and childless, then: " as to the share or respective shares, as well original as accruing of such child or children respectively, upon the trusts herein declared concerning the other share or respective shares." That is, as we see by referring to the preceding clause, on the death of Anna G. Eaton, unmarried and childless, her interest in the income was to pass to the surviving children, to be enjoyed by them, not absolutely as estates of inheritance, but upon the same trusts and under the same limitations as their original shares. In short, after her death they had the same proportionate interests as though no estate had vested in her at all, and they held under the same trusts and upon the same conditions and subject to the same limitations, as if their sister had not taken at all.

No other construction is consistent with the express provision that the share of such deceased child is to be held " upon the trusts herein declared, concerning the other share or respective shares." And this last clause, it is to be noticed, applies not to the original shares only, but to the share or respective shares *as well original as accruing*, showing that the testatrix intended that the shares accruing from the decease of any child, were to be treated in the same way precisely as those which had vested in the survivors upon the original distribution.

The provision for cesser, then, would apply to these accruing shares as well as to the original shares, for it relates

expressly to "the income to which they are respectively entitled under the preceding trusts."

Besides, this is the only construction which can give effect to the manifest intention of the testatrix, as shown by the whole will, that no interest shall vest in any of the children which can be alienated by them, or be taken by their creditors.

And what is true of the sister's share is true also of any contingent interest in the shares of the brothers.

It is only on the event of Amasa M. Eaton's surviving his brothers and of their dying childless, that he would receive any part of their shares of the income, and it is submitted that inasmuch as his interest in their shares was thus, at the time of his bankruptcy, dependent upon a contingency, it was not such a vested interest as would pass to his assignee, even had the provision for the cesser of income not intervened.

But by this provision such interest as he might therein have acquired was taken away. At most it could have been but a right to receive a certain proportion of the income; but after his bankruptcy his right to receive any part of the income was entirely gone. All such rights were absolutely destroyed by his bankruptcy, and no provision is made for their ever revesting. There remained therefore no interest in his brothers' share which could pass to his assignee.

3. As to the alleged invalidity of the provision for cesser on the ground that there is no limitation over after bankruptcy except for the benefit of the wife and children, and that Amasa M. Eaton has neither wife nor child.

We fail entirely to perceive any ground upon which this charge can be supported.

The provision in question, by its express terms, applies only during the life of the bankrupt. It goes on in clear and unmistakable language to provide that the income shall be devoted to the wife and children, and in default of wife or

children "at any period during the life of my said sons respectively and when and so often as the same shall happen" then to accumulate the income in augmentation of the principal in the nature of compound interest. At the death of such son the prior clauses of the will apply as though he had been in the enjoyment of the income all his life. During A. M. Eaton's life, should he remain unmarried, the limitation over of the income is to the trustees themselves upon the trust to accumulate and increase the principal for the benefit of the remaining beneficiaries, but the trust is subject in the event of his marriage, to be determined and the income devoted to the benefit of the wife and children so long as there are such persons to take.

At his death the provision for them ceases and the children are to be provided for as specified in the preceding part of the will.

Whether or not A. M. Eaton has now a wife or children is entirely immaterial as affecting the validity of the clause in question, since the limitation over for accumulation is not merely in case he should have no wife or children at the date of his bankruptcy and to continue in force until his death, without reference to future events, but it is only to operate when and so long as there are no wife and children to take. The provision is for future wife and children as well as present ones.

4. As to the charge that the interest in the accumulation of income is not vested within the period or in the manner required by law, and that there are no ulterior limitations over of the same.

The charge is made in the bill as to accumulations "directed to be made in default of such wife and children after the decease of such son."

Now, in the first place, there is no direction in the will as to any accumulation to be made after the decease of such son. After providing for the cesser of income upon the event of bankruptcy, &c., the language of the will is: "and the same

income shall be applied by my said trustees *during all the then residue of the life* of my said sons respectively, in the manner following:" and then follow the trusts as to wife and children, and the provision for accumulation; and the latter provision itself is: "in default of any object of the last mentioned trust at any period *during the life of my said sons respectively*," &c.

It is clear, then, that all of the provisions of the will dependent upon the contingency of bankruptcy, were intended to operate only during the life of the bankrupt, and that on his death the ulterior trusts were to take effect precisely as though no forfeiture had occurred. On his death, a prior clause of the will provides that the income of any son shall go to his children if he leave any, and if not, to the surviving brothers and sisters. This clause is uncontrolled by anything subsequently contained in the will, and must therefore be allowed full force and effect.

The only question under this head, is as to the vesting of the accumulations made during A. M. Eaton's life.

The will provides, as clearly as language can express, that during such part of A. M. Eaton's life as he shall be without wife or children the trustees shall accumulate the income,—not to be kept apart as a separate fund, (in which case the complainant's claim might be well founded,)—but to invest the same "in augmentation of the principal or capital thereof, in the nature of compound interest." That is, each year, or at such other interval as they see fit, they are to add to the capital the income which would have gone to the bankrupt had he not incurred a forfeiture, the capital thus augmented being the source of the income for the year following.

After providing for this disposition of the income, there was no need of any further limitation respecting it. It vested at once in the trustees, and is thenceforth merged in the principal, is held upon the same trusts and is subject to the same limitations.

Its identity is thenceforth completely lost.

If therefore the ulterior trusts as to the original capital are valid,—which we do not understand to be disputed,—the limitation over of the accumulations must be valid also.

5. It is averred that the discretionary powers in the will purport to vest in the trustees the discretion to pay over one-half of one-third of the trust estate and the income of said one-third to a son after his bankruptcy, to the exclusion of the wife or children of such son, and vest in the trustees no discretion to pay such income or estate to any other persons, and that such provisions are contrary to the policy of the law, and void.

In the first place, this clause is not to be construed as complainant's bill would imply. It is true there is no express discretion given to pay the income, &c., to any one but the bankrupt, but in the present case the discretion to do or not to do this implies also a discretion to leave the fund to the operation of the prior trusts, *i. e.*, not to pay it to any one, but to add it to the capital. The case is not therefore one in which the trustees can use their discretion only in favor of the cestui que trust, as is implied in the language of the bill; in which case the trustees have only a discretion as to the amount or mode of payment, but they are at perfect liberty to pay the income to A. M. Eaton or to invest it in augmentation of the principal, as may seem to them, in their discretion, best.

If this clause in the bill be intended merely as a claim that the discretionary powers in themselves are void, it might be sufficient to say that so far as the purposes of this suit are concerned it is entirely immaterial whether they are valid or not.

They are not limitations, the validity or invalidity of which might affect that of the whole preceding series of trusts, but they are mere powers whose exercise may indeed affect the operation of the prior trusts but which are entirely inde-

pendent, and which may stand or fall without affecting their validity. Were they stricken from the will, a full and complete disposition of the trust estate would still remain.

If valid, these powers merely enable the trustees to dispose of funds in which A. M. Eaton's interest was entirely destroyed by his bankruptcy, and which by the prior limitations were upon that event vested in third persons upon trusts in which he had no interest.

If invalid, they leave the prior limitations in full force.

In neither case is any interest of the assignee affected.

It may, however, be contended that the power to pay over any part, either of the principal or income of the trust estate, to A. M. Eaton after his bankruptcy is inconsistent with the prior clause of forfeiture, and that the two clauses construed together have the effect of leaving an interest in him notwithstanding his bankruptcy.

To support this position it is not enough that the will shows that the testatrix wished to assist her son even after his bankruptcy, or that there is a possibility that he may derive some benefit from the estate through the exercise of these discretionary powers. Neither of these things is contrary to the policy of the law. It must appear that notwithstanding the clause of forfeiture, A. M. Eaton still retains an absolute right, which the law will enforce, to require of the trustees, either now or at some future time, some provision from the estate in their hands.

We submit that under the terms of the will he has no such right.

The clause of forfeiture is absolute in its terms. It provides that upon the bankruptcy, &c., of either of the sons, the trusts concerning his share of the income "shall immediately thereupon cease and determine."

The discretionary power as to income provides that notwithstanding the forfeiture, "it shall be lawful for my said

trustees might give him something at some future time. He also had a possibility of receiving something from his brothers or other friends, and if his mother were now living, from her. No one would pretend that the assignee could take any interest in these gifts when made, and yet the bankrupt's right to require assistance is no greater in the one case than in the other. The testatrix has reposed the most unbounded confidence in the trustees. They probably know what her wishes were, but they are expressly absolved from any obligation to follow them, and they may refuse to assist the bankrupt son, however great his necessities may be, and however apparent may be the advisability of relieving them.

Anything they may choose to give is as much a free gift as though it came from the bounty of an entire stranger.

We have been unable to find any decided case in which such a discretionary power to be exercised after forfeiture has been construed.

There are, however, several eminent real property writers who support the view that the introduction of such a power does not prevent the operation of the forfeiture, nor give the bankrupt any interest in the estate.

In Bythewood's Conveyancing, 3d Ed., Vol. 11, p. 713, there is a discretionary clause, word for word, like the one in question, and it is referred to in the same volume, p. XXXIV, as a "discretionary power to trustees to pay trust money to a son, notwithstanding provision against alienation."

There is a similar form in the same volume, p. 552, in the case of a daughter assigning her life interest whilst discovert, a case involving precisely the same principle.

The same opinion is expressed more at large by Mr. Jarman, the learned annotator of Bythewood's work, in his note upon the form last mentioned, and in a note to the same work, edition of 1834, Vol. 10, p. 523, and again in his own work on Wills, Vol. 1, p. 821, where he uses the following language:

"And the vesting in trustees of a discretion as to the mode in which income is to be applied for the benefit of a cestui que trust does not take it out of the operation of bankruptcy or insolvency, to effect which, the discretion of the trustees must extend not merely to the manner of applying the income for the benefit of the cestui que trust, but also to the enabling of them to apply it either for his own benefit or for some other purpose."

Mr. Atherly, another eminent writer, in his work on "Marriage Settlements," page 333, uses the following equally decided language:

"I am aware that by making the payment of an annuity depend upon the discretion or will of a third person, no disposition can be made of it; nor can it be come at by creditors, either at law or in equity. But, then, the payment of the annuity, &c., depending upon the mere pleasure of the trustee, the cestui que trust has no certain ascertained interest in it."

From the manner in which these writers treat the subject, it would appear that the validity of these powers is settled in England by the general opinion of the profession, which would account for the absence of adjudicated cases upon the point.

6. As to the alleged inconsistency between the limitation to wife and children after bankruptcy and the subsequent permission to the trustees to pay over part of the principal to the son, and the income to the son, or to the son, his wife and family.

The rule is a familiar one that all the parts of a will are to be construed together, and that each part is to be so construed, if possible, as to be consistent with the remainder, so that effect may be given to every part.

Now if the trust to the wife and children stood alone, it would, it is admitted, be an absolute direction to pay the whole of the son's share of the income on his bankruptcy for the support and maintenance of his wife and children. So also

"And the vesting in trustees of a discretion as to the mode in which income is to be applied for the benefit of a cestui que trust does not take it out of the operation of bankruptcy or insolvency, to effect which, the discretion of the trustees must extend not merely to the manner of applying the income for the benefit of the cestui que trust, but also to the enabling of them to apply it either for his own benefit or for some other purpose."

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the prior trust to pay each child of the testatrix his or her share of the income, is considered by itself an absolute one. But both are modified, and one as much as the other, by the subsequent provision permitting the trustees in their discretion to pay over to each child a portion of the principal not exceeding one-half of the trust fund from which his or her share of the income is derived, and the will then declares that "on such transfer being made the trusts hereinafter declared concerning so much of the trust fund as shall be so transferred shall absolutely cease and determine."

Until this discretion is exercised, however, this provision has no effect upon the prior trusts, and when it is exercised it determines them only to the extent to which it is exercised. By the terms of the clause itself it can operate on but half of the fund from which the son's share of income is derived, consequently the remaining half can be in no respect affected by it, and to that extent the former trust still continues in operation.

Nor is the power to pay the forfeited income to the son, or to the son and family, necessarily inconsistent with the former trust for the wife and children alone. It is true both cannot be fully exercised at the same time, but this is true also of every case in which a discretion is vested in the trustee to change the mode of disposition of trust property.

The reasonable construction of the two clauses is that the first shall operate as long as and whenever the trustees shall not dispose of the income under their discretionary power. They, with the clause for accumulation, are alternate in their nature. The first clause can take effect only when there is a wife or children in being, and to provide for this contingency of there being no wife or children the clause for accumulation is introduced. Only one of these clauses can operate at one time, and in the meanwhile the other is suspended, waiting until circumstances shall call it again into activity. The clause for the payment of forfeited income is similar in its nature.

It is not obligatory upon the trustees, but merely gives them a discretionary power which they may exercise or not, and for as long or as short a time as they please. They may never exercise it at all, in which case the former clause remains in full force and effect. They may exercise it for a time and then cease, and then the former clause comes into operation again, or they may only partially exercise it, leaving a part of the income to the operation of the prior trust. As alternative and supplemental clauses they are consistent with each other and may well stand together.

That there is now any practical conflict between them cannot be pretended.

7. The bill avers that the trustees have attempted the exercise of these discretionary powers by paying over the income of one-third of the trust estate to A. M. Eaton, and in pledging and conveying part of the principal of the estate to him,—and that therefore complainant is entitled to a decree requiring this discretion to be further and fully exercised for the benefit of creditors.

The defendants admit that shortly after Mrs. Eaton's death they advanced to A. M. Eaton $25,000 from the capital of the estate, but they deny that since his bankruptcy they have in the exercise of their powers paid him any part, either of the capital or income.

Two questions are presented by these averments:

1. Whether such payments have been, in fact, made.

2. Whether, if made, this fact entitles the complainant to require that further payments be made to him as assignee.

As to the first point.

There is no attempt to prove any payment from the capital fund since Eaton's bankruptcy.

And the trustees all testify that they have never exercised the discretionary power which the will gives them, to pay over any part of the income to him since his bankruptcy.

Bailey's testimony, Int. 22, 23, 24, 25, p. 92, 93.
Eaton's " " 7, 8, p. 100. Int. 11, 12, 13, p. 101.
Ruggles' " " 5, 6, 7, 8, p. 134, 135.

And since his bankruptcy, his share of the income has been carried to what is called the "suspense account."

Bailey's testimony, Ints. 20, 21, p. 92.

It is admitted that Eaton has also kept an income account in which he is credited with his share of the income, but the testimony shows that he did this merely for his own convenience in ascertaining the shares of the beneficiaries, and he was expressly told by Bailey, as both of them testify, that this was an informal proceeding, and could not be considered as the final act of the trustees, or binding upon them.

Eaton's testimony, Int. 11, p. 101.
Bailey's " " 36, p. 97.

It is also admitted that he has received some money from the trust estate since his bankruptcy, but to a portion of this he was entitled as a compensation for services rendered to the estate, he having the principal charge of the practical management of the estate, which took much time and trouble. For these services it was understood that he should be paid, but no rate was fixed upon till the Spring of 1871.

Eaton's testimony, Int. 17, p. 43.
Eaton's " " 34, p. 44.

Exhibit L, p. 52.

Mr. Eaton also testifies that he had an express understanding with Mr. Bailey, the senior trustee, that the money drawn by him from the trust estate should not be considered as

received by him as a beneficiary, but as money for which he was to be accountable to the estate.

Exhibit L, p. 52.
Eaton's testimony, Int. 9, p. 100.
Eaton's " " 12, p. 101.

But even had payments been made to A. M. Eaton from the trust estate since his bankruptcy, we submit that this gives the assignee no right to call for further payments.

1. Because the powers under which the trustees must act in making such payments are merely discretionary powers, not trusts, and the court will not attempt to control their exercise.

2. Because any payments made in the exercise of these powers would be in the nature of after acquired property, to which the assignee has no title.

1. There can, we think, be no question but that these are properly mere discretionary powers. They are expressly declared not to be imperative, and this is the distinction laid down in the books between powers and trusts. "Powers," says Wilmot C. J., "are never imperative; they leave the acts to be done at the will of the party to whom they are given. Trusts are always imperative, and are obligatory upon the conscience of the party intrusted." Att'y. Gen. v. Downing, Wilm. 23.

"It is settled that the court will never exercise a mere discretionary power, either in the lifetime of the trustees, or upon their death or refusal to act."

Hill on Trustees, 486.

Nor will the court interfere to control the trustees acting *bona fide* in the exercise of their discretion.

Ibid. 489.
See also Lewin on Trusts, 538.
" Maddison v. Andrew, 1 Ves. 60.
" Boss v. Godsell, 1 Yo. & Col. 617.

Had no attempt been made by the trustees to exercise these powers, it is clear, both on principle and authority, that the court could not compel them to do so.

There is, however, a class of cases in which a wide discretion has been vested in trustees as to the disposition of the trust estate, where it has been held that the discretion was terminated by the bankruptcy of the cestui que trust, and that the whole interest passed to the assignee.

But these cases will be found, on examination, to relate not to naked powers, like the one at bar, but to powers coupled with a trust, as, for example, where the discretion of the trustee is to be exercised only as to the amount, time or manner of payment.

Thus in Green v. Spicer, 1 Russ. & My. 395, the trustees were to receive the rents and profits of the trust estate and apply the same for the testator's son during his life in such manner as they might deem proper, such application to be in the entire discretion of the trustees. The son was to have no power to sell, mortgage or anticipate such rents and profits. On the insolvency of the son it was held that his interest in the rents and profits passed to the assignee.

So in Piercy v. Roberts, 1 My. & K. 4, where the trustees had an unlimited discretion to apply the trust fund for the use of the testator's son, in larger or smaller portions, at such time or times, immediate or remote, and in such way or manner as they in their judgment and discretion should think best, the son having been discharged under the insolvent act before the whole fund had been paid to him, the court held that the discretion of the trustees was determined, and that the fund passed to the assignee.

Other similar instances are to be found in
Snowden v. Dales, 6 Sim. 524.
Lord v. Bunn, 2 Yo. & Col. 98.

These decisions rested upon the ground that under the terms of the will a trust was created which was not deter-

mined by the bankruptcy, and that the power annexed controlled merely the manner of exercising the trust, but did not go to the substance of the trust itself. The trust therefore survived, and the trust estate vested in the assignee, while the power, being merely ancillary to the trust, and no longer capable of being exercised, was held to be determined.

These cases are clearly distinguishable from the one at bar, in which, as we have hereinbefore shown, there is no *trust* in favor of A. M. Eaton, but a mere naked *power* in the trustees to confer upon him a part of the trust estate only if they choose to do so.

"Reference is made to the case of Piercy vs. Roberts, 1 M. & K. 4, as authority for the doctrine, but the case cited, in the judgment of the court, affords no support whatever to the views expressed by the annotator. In that case £400 were devised in trust to the executors to apply and dispose of, for the sole use and benefit of the son of the testatrix in such manner as the executors should in their discretion think best, and in the case of the death of the son before the whole fund was exhausted, the balance not applied was to become part of the residuary estate of the testatrix. Insolvency of the son followed before the sum was applied to his use, and the Master of the Rolls held that the bankruptcy of the son terminated the discretion of the executors, and that the unapplied balance vested in the assignee. Later cases, such as Twopenny vs. Peyton, 11 Sim. 487, Wallace vs. Anderson, 16 Bev. 536, seem to deny that the discretion of the trustees ceases in all cases of bankruptcy. But it is not necessary to decide that point in the present case, as the provisions of the will in question differ widely from the clause under revision in the case of Piercy vs. Roberts, where it is clear that there was an absolute trust established by the will in favor of the son, and the only discretion vested in the executors was as to the amount they should apply, and the time and manner of directing the application. Perry notices this distinction in his valuable work on Trusts. Nor is there anything in the case of Piercy vs. Roberts which affords any countenance

whatever to the proposition that the trustees must be made incapable of exercising the discretion in favor of the bankrupt in order to prevent the fund from passing to the assignee so long as the power conferred is a mere discretionary power, to be exercised or not, as they should see fit. And it is clear that such a mere naked power does not carry with it any vested right, which can be enforced in a court of law or equity."

Opinion of Mr. Justice Clifford in court below. Record, p. 164.

But it may be contended that whatever freedom from control the trustees might have had before they exercised their discretionary powers at all, when they did exercise them they were no longer at liberty in their mode of continuing such exercise, and that they are bound to pay for the future what they have in their discretion paid in the past.

As to the payment of any further amount from the capital of the trust fund, we fail to see the slightest color for such a claim.

The power is discretionary in every particular as to the circumstances and amounts; and it is only lawful and not obligatory for the trustees to pay anything at all. How can the fact that at a date long prior to Eaton's bankruptcy the trustees saw fit to pay him $25,000 from the trust estate be regarded as binding them after his bankruptcy to the payment of the whole amount under their control?

As to the payment of the income, we regard it as equally clear that even if the trustees have continued to make payments to A. M. Eaton since his bankruptcy as they did before —which as a matter of fact we deny—they are bound to do so no longer than they choose. Otherwise that is made obligatory which the testatrix has expressly said shall not be so.

We admit that there are cases which hold that where a discretion as to the amount of income to be paid has been

exercised by the trustee he cannot afterwards arbitrarily reduce the amount.

But these cases have no application to the one we are considering. They are all cases of powers coupled with trusts, and not cases of bare discretionary powers. In every instance the cestui que trust had an absolute right to a provision from the trust estate, and the discretion of the trustee was to be exercised only as to the amount or mode of payment. When these have been fairly settled by the trustee in the exercise of his discretion the cestui que trust has a vested right to call upon the estate for the payment of the sum fixed upon.

In the case at bar, A. M. Eaton's interest in his mother's estate was entirely forfeited by his bankruptcy, as we have already shown, and the fact that the trustees have in the exercise of a purely discretionary power seen fit to give him a part of the forfeited income cannot give him the right to claim a repetition of the favor at their hands. If his mother were living she could have exercised such a discretion in the disposal of her own income to assist her son. Why may she not delegate the same discretion to her trustees of her property ?

Finally, the complainant claims that the trustees have equitably appropriated a portion of the trust fund to the payment of certain notes of Bailey & Eaton, endorsed by J. Y. Smith, and afterwards paid by him, on the ground that these endorsements were made without consideration, and were procured by W. M. Bailey and A. M. Eaton, on their representation that the latter had an equal one-third share in the large estates left by his mother,—that this share was sufficient to meet all the obligations so endorsed,—that said Smith had always been given to understand this property should be used for this purpose, and that Amasa M. Eaton was able to pay, and would pay all his obligations.

The truth of these allegations, both as to matters of fact and matters of law, is denied by the defendants, who contend—

1. That no representations were made to said Smith such as are alleged, on which said Smith had a right to rely as binding the estate of Mrs. Eaton, and that as matter of fact he was not induced to endorse the paper of Bailey & Eaton by any such representations, but principally at the request and for the accommodation of W. M. Bailey, whose son was a member of said firm, and partly also on account of his connection with the Union Coal and Oil Co., and East Providence Land Co., in both of which he was a large stockholder, and for both of which Bailey & Eaton, who acted as their agents, advanced considerable sums of money procured by the endorsements of said Bailey and Smith, and applied to these purposes with their knowledge and consent.

2. That even if such representations had been made they would not bind the trust estate, since it is admitted that they were made by a part only of the trustees.

3. That the trustees have, under the will, no authority to bind the trust estate in the manner claimed in complainant's bill.

4. That even were the allegations of the bill respecting the representations made to Smith true, and even if he were equitably entitled to reimbursement from the trust estate for the amount of the bills endorsed by him, and taken up by him, this equitable right has in no respect vested in the complainant, as assignee in bankruptcy of A. M. Eaton, and cannot be enforced by him in this suit.

As to the first point.

The account which Mr. Smith gives of the circumstances under which he commenced to endorse for Bailey & Eaton is as follows:

"I made the endorsements by the request of W. M. Bailey, for Bailey & Eaton, under his name, after the decease of Mr. Eaton's mother, he assuring me that there was ample property to secure me, as Mr. Eaton was to receive one-quarter of his mother's estate. He also showed me a list of property, after-

wards, of Mrs. Eaton's estate; a large landed estate of perhaps 150 or 200 acres of land of great value; a long list of stocks, bonds and securities. He spoke of their being very valuable, most of them being above par."

Record, p. 56. Int. 4.

Being asked in the next interrogatory whether these representations were or were not made more than once, he says, "I think they were made more than once *by showing the list of securities.*" Int. 5, p. 56.

And again he is asked, "Did you ever examine the will of Mrs. Eaton, or take any advice concerning the same, prior to assuming the relation of endorser for Bailey & Eaton, of which you have spoken? Ans. I never did. The assurance of Mr. Bailey that all was right *at that time* was satisfactory to me; he assuring me that everything was secure for anything that I might endorse." Int. 27, p. 60.

The account which Mr. Bailey gives of the same transaction is substantially different, besides being more full and specific.

He says: "Within a day or two after the death of Sarah B. Eaton, August 1, 1864, I stated to J. Y. Smith in my office that Bailey & Eaton would have paper maturing which it would be desirable to renew. I told him I would like to have him endorse their paper with me, and *I would protect him for such endorsements;* that I thought when the trustees under Mrs. Eaton's will, of which I was one, received from the executors of her will the personal property, that I would advise, and I thought the trustees would be willing to make to A. M. Eaton an advancement under the provisions of her will of about $25,000. I stated at the same time that the property was all in trust, and that Eaton was entitled to the income of one-fourth of her estate. At the time of the conversation I did not know that I was named as one of the executors of her will. J. Y. Smith said he would do so, and subsequently did endorse for Bailey & Eaton without any further

assurance from me individually or as trustee under said Sarah B. Eaton's will in regard to security or protection for such endorsements, from that time to March 1, 1867.

Int. 29, p. 94.

From this testimony of Bailey's it appears that the only guaranty he offered to Smith was his own personal one, and this is consistent with his prior testimony that he "never, as one of the trustees under Mrs. Eaton's will, gave any pledge or assurance to said Smith out of or by means of her estate or out of A. M. Eaton's interest in said estate of indemnity against loss by such endorsements as an inducement to him for the same."

Int. 18, p. 91.

But whichever account of this transaction be taken to be the true one, we submit that the statements alleged to have been made by Bailey cannot be construed into an agreement on his part to reimburse Smith from the trust estate for anything he might be obliged to pay as endorser.

In Smith's own version of the affair he only represents Bailey as saying that "there was ample property to secure him, as Mr. Eaton was to receive one-fourth of his mother's estate,"—by which he must have understood one-fourth of the income, for he knew the estate was left in trust. That is, as one of the inducements for Mr. Smith to endorse, he told him what interest A. M. Eaton then had in his mother's estate, and the statement he made was perfectly true. His remark that it was ample to secure Mr. Smith was merely an expression of opinion, on which the latter had no right to rely, and it cannot, by any reasonable interpretation, be construed into a guaranty. Smith did not rely on it, for according to his own statement the inventory of the property was repeatedly shown him to induce him to make the endorsements, so that in this particular he did not trust to Mr. Bailey's opinion, but to his own. It is remarkable, however, that while he appears from his own testimony to have required

repeated examination of the *inventory* before being satisfied of his security, yet it seems that he never examined Mrs. Eaton's *will* to ascertain what interest A. M. Eaton actually had in the estate.

Int. 27. Record, p. 60.

At all events, if Mr. Bailey's words amounted to a guaranty, they could only bind him personally.

Even if these representations could be held as binding upon the trust estate for the notes then endorsed, the same effect cannot be given to them with reference to notes endorsed long afterwards, after a part of the trust property had been paid over and the relations of parties had become so much changed, and especially after Smith had had such ample time to examine Mrs. Eaton's will and ascertain what Eaton's rights under it really were.

But besides the testimony as to the first interview, Smith says that a list of Mrs. Eaton's property was shown to him several times afterwards, but his testimony is very vague and indefinite as to the purpose for which this was done, and as to what representations, if any, were then made to him. Thus when asked what was said by Mr. Bailey when the list of the Eaton property was shown to him, he says: "The language it is difficult to state, but the object as accepted by me was to show the property ample to secure me in the endorsements that had been previously been talked about and referred to. I know no other object."

Int. 3. Record, p. 65.

Again he says, "I have no doubt the endorsements were talked about at all of these exhibits. There would be no other object, as they were not attempting to sell me any of the property. It must have been to show me that I was secure in making the endorsements for Bailey & Eaton."

Int. 4. Record, p. 66.

These answers show that the witness is testifying not from any distinct recollection of what actually took place, but partly from general impressions, and partly from mere inference as to what the facts must have been.

On the other hand, Mr. Bailey says explicitly, "I never exhibited to J. Y. Smith any list or written statement of Sarah B. Eaton's property with the view or for the purpose of influencing the said Smith to endorse the paper of Bailey & Eaton, and to my knowledge A. M. Eaton never did. The trust estate in which A. M. Eaton had an interest, is the estate to which I refer. I never exhibited to said Smith, in conjunction with A. M. Eaton, any such statement for any such purpose."

Int. 19, p. 91.

In one important particular relating to the exhibition of this list of the Eaton property, Mr. Smith's memory is certainly at fault. It is in evidence that he was one of the appraisers of Mrs. Eaton's estate, and the certified copy of the appraisers' warrant (Exhibit A, p. 54,) shows that he accepted the office and took the usual oath, while the inventory which follows, signed by him as well as by the others, shows that he actually acted as appraiser. But he testifies that he does not recollect that he ever signed such a paper, and he doubts if Mr. Eaton ever presented to him any list of Mrs. Eaton's property for such an inventory.

Int. 4, p. 62.

Mr. Eaton's testimony on this point is, however, clear and conclusive. He says, Mr. Smith acted as appraiser—that "he attended principally to that portion of the inventory, including bank stocks, bonds, mortgages," &c., and that "to assist him in drawing up such an inventory he drew up a list of the property, and sat down with him at his desk in his office, on two separate occasions, on the last of which he (Smith) carried out the values," and that "nothing was said,

either then or afterwards, concerning any indemnity or guaranty to him for endorsing for Bailey & Eaton."

Int. 16, p. 102.

It is certain that Mr. Smith acted as appraiser, and while so doing he must have seen an inventory of Mrs. Eaton's property. He recollects *the fact* that such an inventory was shown him, he has forgotten that he acted as appraiser, and as he has no doubt since relied upon the information derived from the examination of this inventory as proof of A. M. Eaton's pecuniary ability, he now honestly supposes that the inventory was shown him only for the purpose of giving him this information.

But whether such an inventory was or was not shown to him for this purpose is in itself immaterial unless at the same time statements were made by the trustees which showed their intention of making the trust estate responsible for the payment of this paper.

No such statements are in evidence—only the impressions of Mr. Smith that the list was shown to him to prove to him his security in endorsing for Bailey & Eaton.

Nor were these endorsements made as a personal favor to A. M. Eaton.

Smith testifies that his "inducement for making them was to accommodate W. M. Bailey."

Int. 10, p. 57.

And this seems highly probable since Bailey was his brother-in-law, and his son was a member of the firm whose paper Smith was asked to endorse.

Besides, it appears that Bailey and Smith were then, and had for some time been accommodation endorsers for each other, and that Smith then held a mortgage of large and valuable property belonging to Bailey as security for his endorsements.

Smith testifies also that his understanding with Bailey was that all endorsements by him for Bailey & Eaton were to be under his (Bailey's) name, Int. 6, p. 62—so that he was primarily secured in every instance by Bailey as prior endorser by means of the mortgage above mentioned. This is strongly confirmatory of Bailey's statement—Int. 29, p. 94—that when the matter of the endorsements was first talked of he agreed to protect Smith for his endorsements for Bailey & Eaton.

The representations as to Eaton's interest in his mother's estate were not therefore the primary inducements for making the endorsements.

Smith says, to be sure, when asked whether if these statements had not been made he would have endorsed Bailey & Eaton's paper, "I should not. Why should I for a stranger without consideration." But this, if it proves anything, proves too much, for if the endorsements were really made for Eaton as a stranger, and the only consideration was the security to be derived from Mrs. Eaton's estate, it is incredible that he should go on for nearly four years endorsing to the amount he did, without ascertaining what Eaton's real interest in his mother's estate was; and without attempting to reduce this security to a more substantial form, especially when he secured himself so carefully from loss from endorsements for his own brother-in-law. It seems plain to us that his real reliance was upon Bailey individually, and on the security which he had given him, and not upon the estate of Mrs. Eaton.

2. But whatever might have been the effect of the alleged representations by Mr. Bailey as to A. M. Eaton's interest in his mother's estate, (if they had been made by all the trustees,) the trust estate cannot be bound by any representation or promise made by less than the whole number of trustees. This is well settled.

Hill on Trustees, *305; Perry on Trusts, § 411 and cases cited; Wilbur v. Almy, 12 How. 180.

The bill admits that the representations in question were made by W. M. Bailey and Amasa M. Eaton. The proofs show that they were made by Bailey alone.

Smith's testimony, Int. 4, p. 56.
Eaton's " " 15, p. 101.
Bailey's " " 29, p. 94.

Smith says, that Eaton was present at one of the interviews when the list of property was shown to him, and he thinks he heard the conversation which took place, but doubts if he took any part in it.

Ints. 5, 6. Record, pp. 56, 57.

But, even if he were present on this occasion, there is no evidence as to any conversation which took place or as to any statements then made by Bailey.

As to the third trustee, Ruggles, it is not pretended that he ever made any of the representations in question himself, or that he ever knew of any being made by his co-trustees.

To meet this defect in his case, complainant alleges that Ruggles, although he nominally accepted the trust, "was not accustomed to transact business and not competent to perform the duties of the trust, and has not attempted to perform the duties thereof, but left the same to be performed by the other trustees."

These averments are denied in the answers, except that it is admitted that the more active and immediate attention to the details of the management of the trust estate, has, as a matter of convenience, been committed to A. M. Eaton.

Two questions arise:

1. Has George B. Ruggles sufficient mental capacity to perform the duties of trustee under this will?

2. Has he in fact accepted the office and acted as trustee?

1. To show the mental incapacity of Ruggles to act as trustee, complainant has called two physicians—father and son—who testify that between the years 1850 and 1860, Ruggles had three fits of temporary insanity, during two of which he was under their charge at an Insane Hospital.

The elder Dr. Ray then gives it as his opinion, that a person who has had three attacks of insanity in ten years "will never be likely to recover that physical condition of the nervous system which is required for the exercise of the higher mental powers." He does not, however, give any opinion as to Ruggles' actual mental condition since leaving the hospital in 1860, and admits that he has not seen him, certainly for five years, and for some years prior to that time. He admits also that the quiet life which he has since led in the country would be favorable to his mental condition.

Int. 14, p. 83.

The younger Dr. Ray, with no greater opportunities for forming his judgment, is far more positive in his opinions, but they do not appear to be founded on actual observation, nor does it appear that he has seen Ruggles at all, since he left the hospital in 1860.

There is not a particle of evidence in the case that since 1860 Mr. Ruggles' mind has been in other than a sound condition.

On the other hand, Mrs. Eaton, who had the best of opportunities of judging as to his real condition, considered him, when her will was made in 1864, as competent to act as one of her trustees, and no objection was made by any one after her death to his acceptance of the office.

It is, moreover, in evidence, and not questioned by the complainant, that for some years previous to his mother's death, he had the management of her business, and that then, and ever since, he has been largely engaged in farming, owning

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and cultivating about 900 acres of land, and attending to all the business incident thereto.

Eaton's testimony, Int. 24, p. 105.
Ruggles' " " 18, p. 136.

We submit that in view of these undisputed facts, the mere opinion of a physician as to what would be likely to be the fact, is entitled to no weight whatever.

The question is not whether Ruggles is the best man for the place—that the testatrix decided for herself; but whether he was of so unsound a mind that his acceptance of the office of trustee was a mere nullity. Of this there is no proof whatever.

As to the second point, it is proved that Ruggles has not only accepted the office of trustee, but has performed the duties of that office from the death of Mrs. Eaton to the present time.

The three trustees all concur in saying that he has acted with the others in all matters of importance relating to the estate.

Bailey's testimony, Ints. 3, 4, p. 87.
Eaton's " Int. 14, p. 101.
Ruggles' " " 3, p. 134. Int. 13, p. 136.

Eaton says further, that nothing of importance relating to the management of the trust estate was done or decided upon without consulting Ruggles, and that he always showed excellent judgment in his advice.

Int. 25. Record, p. 105.

Ruggles himself says also, that to his knowledge, no business relating to the estate, other than ordinary or current details, has been transacted without the knowledge, conference and assent of the three trustees.

Int. 3. Record, p. 140.

It is perfectly consistent with this testimony that Ruggles signed the orders authorizing the payment of money from the trustee account only upon checks signed by Eaton or Bailey, or both. The purpose of these orders is plain. Ruggles lived at a distance from the city, and could not attend to the details of managing the trust estate, which it is admitted were intrusted to Eaton, who also kept the books, and was in fact the agent of the estate. It was, therefore, a matter of convenience that Eaton should be authorized to draw checks in his own name to meet the various charges upon the estate, instead of being obliged to call a meeting of the trustees every time a check had to be signed. The evidence shows this was the purpose, and the only purpose, for which these orders were given.

Bailey's testimony, Int. 37, p. 97.
Ruggles' " " 12, pp. 135, 136.

So far from this being an unusual proceeding, it is a matter of common knowledge that where an estate is left in the hands of several trustees, it is usual for the practical details to be left in charge of one of the number, and to give him authority to sign checks in the name of the whole number.

Since, therefore, Ruggles was not only competent to act as trustee, but did, as matter of fact, so act, no representations or contracts made without his participation can be binding upon the estate as the act of the trustees.

3. In the third place, the trustees had no power to bind the trust estate in the manner claimed by the complainant.

The discretionary power given by the will to the trustees empowers them only "to transfer absolutely to my said children respectively, for his or her own proper use and benefit, any portion less than one-half of the trust fund from which his or her share of the income under the preceding trusts shall arise," &c., "and immediately upon such transfer being made, the trusts hereinbefore declared, concerning so

much of the trust fund as shall be so transferred, shall absolutely cease and determine."

This only authorizes a direct transfer of a portion of the principal to the cestui que trust, and we submit that it does not authorize a pledge of the fund to a third person, even though it be to secure some cestui que trust.

Under such a construction of the clause, when was the time of payment which was to determine the prior trusts? Not at the time the pledge was made, for the trustees did not then determine to pay any money to the cestui que trust, and the endorser had then no claim, for it was then uncertain whether he would ever be called upon to pay the note himself. Was the transfer equitably made when the liability of the endorser became fixed? This can be so only on the ground that the trustees had previously decided that they would transfer the fund absolutely upon the happening of a future contingent event, without determining on the occurrence of that event, whether or not circumstances existed which in their opinion rendered it expedient to place any part of the trust fund at the disposal of the cestui que trust. When the time for payment arrived they would have no longer any discretion in the matter. We submit that the will gives them no power to waive the exercise of their discretion in this matter.

As to the discretionary power to pay income to a son after bankruptcy, the case is still stronger, for prior to the bankruptcy the trustees had no discretionary power whatever over the income, and it is clear that they could not then agree that if they ever had such power they would exercise it in a particular manner, irrespective of the circumstances which might then exist. This power was in abeyance, and did not come into existence until the bankruptcy, and until then no discretion was vested in the trustees which they could exercise.

4. Finally, even if J. Y. Smith were equitably entitled to be reimbursed from the trust estate for the amount of the notes endorsed by him for Bailey & Eaton, on the faith of the

alleged representations of the trustees, this equitable right has in no way vested in the complainant, and cannot be enforced by him in this suit.

It is only such rights as the *bankrupt* had at the date of his bankruptcy which vest in the assignee. The rights of the bankrupt's *creditors* do not pass to him.

The arrangements between Smith and the trustees conferred no rights upon Eaton. If they were what complainant claims they were, they amounted simply to a guaranty on the part of the trustees that the notes should be paid, and if they have made such a guaranty, and it is a lawful one, they are liable to Mr. Smith, but not to the maker of the note or his assignee. So far as Eaton himself is concerned, it is precisely the same as though the guaranty had been made by perfect strangers.

ABRAHAM PAYNE, } *Solicitors for*
SAMUEL CURREY, } *Defendants.*